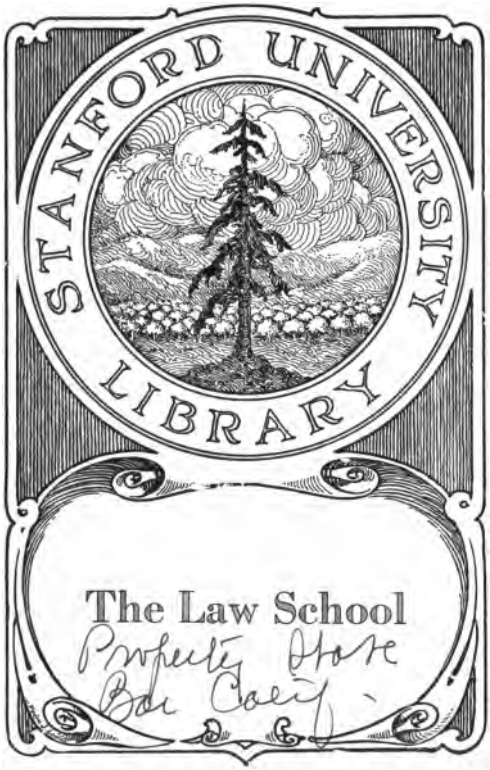

OTTO B. RUPP, President

WASHINGTON STATE BAR ASSOCIATION

PROCEEDINGS OF THE

32nd Annual Convention

HELD IN THE

City of Aberdeen, Washington

July 29th, 30th and 31st
1920

Law Fees

OFFICERS

...of...

AMERICAN BAR ASSOCIATION

1920—1921

President

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Secretary

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Assistant Secretary

Gaylord Lee Clark, Maryland Trust Bldg., Baltimore, Md.

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Charles E. Shepard, Seattle

Member General Council

Arthur W. Davis, Spokane

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John L. Sullivan, Seattle

Overton G. Ellis, Tacoma

Wilmon Tucker, Seattle

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OFFICERS OF
WASHINGTON STATE BAR ASSOCIATION
1920--1921

President, Otto B. Rupp.....Seattle
Secretary-Treasurer, William J. Millard.....Olympia

District Vice-Presidents:

Glenn C. Beechler.....Seattle
R. M. Davis.....Tacoma
James M. Hogan.....Everett
Joseph McCarthy.....Spokane
R. J. Venables.....Yakima

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Charles E. Shepard.....Seattle
Clark Prescott Bissett.....Seattle
B. S. Grosscup.....Tacoma

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William Carr Morrow.....Tacoma
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Charles Peter Lund.....Spokane
Clifford D. Cunningham.....Centralia
Scott Z. Henderson.....Tacoma
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Rowland S. Ludington.....Wenatchee
William Harrison Abbott.....Bellingham
David Vernon Morthland.....Yakima

LEGISLATIVE

Claude D. Randall.....Spokane
William Vaughn Tanner.....Seattle
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Thomas E. Grady.....Yakima
Robert E. Evans.....Tacoma

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C. Alex. McCabe.....Pomeroy
Will J. Griswold.....Bellingham
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John Arthur.....Seattle
Frank B. Churchill.....Kent
Albert W. Tyler.....Olympia

PUBLICATIONS

Edward W. Allen.....Seattle
Clark Prescott Bissett.....Seattle
Clyde Musgrave Hadley.....Seattle
William J. Millard.....Olympia

UNIFORM STATE LAWS

Charles E. Shepard.....Seattle
Clive A. Pettijohn.....Davenport
George M. Ferris.....Spokane
James Edward Burkey.....Tacoma
Floyd Leroy Stotler.....Colfax

SPECIAL COMMITTEE ON DEFINITION OF THE PRACTICE OF THE LAW

Oliver B. Thorgrimson.....Seattle
Overton Gentry Ellis.....Tacoma
Ralph Bertram Williamson.....Yakima
Chester Ralph Hovey.....Ellensburg
Alexander M. Winston.....Spokane
Leo Teats.....Tacoma
Hiram Elwood Hadley.....Seattle
Theodore B. Bruener.....Aberdeen
Frank Truman Post.....Spokane
Marion Edwards.....Seattle

PROCEEDINGS

OF

Thirty-Second Annual Convention

OF

Washington State Bar Association

HELD AT

ABERDEEN, WASHINGTON

OPENING SESSION,
THURSDAY, JULY 29, 1920, 10:00 A. M.

President Post: Members of the Bar Association will please come to order.

I now take pleasure in introducing to you Mr. J. J. Carney, President of the Aberdeen Chamber of Commerce, who will formally welcome us as guests of the City of Aberdeen.

Mr. Carney: Mr. President, Members of the Bar, Ladies and Gentlemen: On behalf of the citizens of Aberdeen I wish to welcome you to our city and I trust your visit to Grays Harbor will be pleasant. It occurred to me in noticing the body here this morning that weighty responsibility rests upon the legal fraternity of this state. As judges and counselors they construe our laws and in a measure execute them, and in the legislature they predominate over any other calling. Therefore, a weighty responsibility rests upon them.

We are known throughout the civilized world as one of the greatest law making and law breaking people on the face of this globe. Whenever we want a law, we get together and organize and force the law through the legislature and then sit down. One of the greatest causes for the failure to observe the laws and to give them proper respect is the fact that there are so many legal delays. Governor Coolidge, speaking of law enforcement and disrespect for the law, called attention to the long delays of law and cited the instance of Sir Roger

Casement, who was arrested, tried and executed within a month. In the same passage it was stated that Townley, who was convicted of seditious utterances a year after trial, was denied a new trial. Nothing so tends to create disrespect in my mind as these unnecessary delays.

It reminds me that for a great many years I published a paper. In following court proceedings I found that demurrers were most frequently overruled; and I discovered that it was a custom of attorneys to demur when they weren't ready to proceed. I think that fewer laws and a more rigid and prompt enforcement would largely remedy this and that the responsibility rests upon the legal fraternity.

My acquaintance with the legal fraternity convinces me that this Association has done a lot of good in the way of purifying the membership of the bar. But to my mind, ladies and gentlemen, you have a further duty in enacting laws and in insisting upon their prompt enforcement.

I am reminded of the story of a young lawyer who was pleading a very tough case in the common pleas court and after the judge had ruled against him, sat down muttering something about casting pearls before swine. When he later rose to address the jury, the judge said: "More pearls?" "No, your honor, I am not going to speak to the court this time, I am going to speak to the jury."

President Post: I am informed that Mr. Theodore T. Bruener of the Grays Harbor Bar Association has a message for the Association. He needs no introduction to the members of this Association. Gentlemen, Mr. Bruener.

Mr. Bruener: The Aberdeen and Grays Harbor Associations remember with great pleasure the meeting of this Association that was held in this city about ten years ago. We are very glad indeed to be your hosts and we want to make your stay here as pleasant as possible. We hope that you will bear with us in the matter of accommodations, as we are entertaining three associations at this time.

I desire merely to say a few words in reference to our program. The Grays Harbor Country Club grounds are open to the members of the Association. On Saturday the Bar

Association desires you to be our guests on a trip to Lake Quinault, which is distant about fifty miles from the city of Aberdeen, through very beautiful scenery. Those of you that have not made this trip will be greatly repaid by making it. We have arranged for a fried chicken dinner. It was thought best to have this dinner at about 1:30 on Saturday for the reason that if the dinner is held at six o'clock it will be a number of hours before the same is over, and many will want to take the evening train back to Seattle. We will leave from the Washington Hotel. Automobiles will be provided and we want you to go. After dinner the members may do as they please. I would like to know about how many of the members and their guests will come with us.

President Post: Response to these kindly words of welcome will be given by Mr. Rockwell.

Mr. Rockwell: Mr. President, Gentlemen of the Association, and Ladies: We have listened here to welcoming addresses and I will say that at least one of them has raised in my mind some suspicions. And in these days of de jure war, these piping days of de facto peace, it is well enough for us to be a little suspicious. In fact, since the first of January, 1915, there has been very little confidence in our fellow men. If I am without any blot on my escutcheon that has been made public, I have rested under the suspicion of some of my best friends. Now, we had hoped that we wouldn't be met here today with a demand for law enforcement. This is no occasion for it. And I want to say to my friend Bruener and the gentlemen who made that law enforcement speech that while we have a number of prosecuting attorneys here with us, all of them but one are outside of their jurisdiction and the one who is here is a candidate for re-election.

Now there is one other gentleman here, Mr. McDonald, the prohibition law enforcement officer, I want to say if he is here in a social capacity, he is most welcome; if he is here in an official capacity, he is as welcome as the smallpox in a large congregation. While I feel satisfied that this welcome that we are going to have is going to be the welcome that we want,

at the same time I don't desire to commit myself at this time on any response to this welcoming address.

Now, I have been told on good authority that St. Paul said that faith without works was all bunk. Now, of course, St. Paul did not use that exact language, but if he had lived in this progressive day and age he no doubt would. Now, these gentlemen no doubt have faith, but unless they can show the works, they are not going to amount to anything. As for me, I am going to withhold my opinion and file a memorandum opinion at the end of the session.

President Post: Gentlemen, the next order of business is the President's address.

President Post delivered his address. (See Appendix.)

President Post: We will now have the report of the Secretary and Treasurer. Mr. Bissett, are you ready to make your report?

Mr. Bissett: I have not filed any written report as Secretary for the reason that all matters usually contained in a secretary's report will be found in the report of the Committee on Membership and the report of the Committee on Organization. As Treasurer I now make and have filed the following report:

TREASURER'S REPORT FOR YEAR ENDING JULY 29, 1920.

RECEIPTS

Received from former treasurer, cash in bank	$201.22
To dues received to date	348.00
Total	$549.22

DISBURSEMENTS

To printing, stationery, stenographic services, expressage, stamps, etc.	$300.72
Balance on hand	248.50
Total	$549.22

I may say also that I have received $100.00 from the Spokane Bar Association, but the report does not include that amount as I do not know just how to credit that sum. The

proper disposition of this money can be better determined when you have heard the report of the Committee on Membership and the Committee on Organization.

President Post: Is the Committee on Membership, which is also the Committee on Organization, ready to report?

Mr. McCarthy of Spokane: The Committee on Membership and Organization has decided to submit to you as its report a proposed constitution, which the committee recommends that you adopt.

Before reading this proposed constitution, which will take some little time, let me say that there has been considerable discussion in the past concerning a better organization of the Bar and the method of securing such organization. It is manifest to me at least that the lawyer is drifting away from activity in public matters, and that this is partly due to the fact that many of our members as lawyers are lacking in class consciousness. For instance, there was far more interest taken by the members of the realty association in its recent meeting at Spokane than there is in this meeting by the lawyers of the State. At the time of the realty association meeting in Spokane, a special train came from Portland and a special car from Seattle. If this Association is to continue to grow and be of benefit, something must be done to arouse the interest of all the lawyers in the State. It is our hope and belief that through the means of this new constitution such interest will be aroused. With your permission I will now read to you the proposed constitution, and at its conclusion will be glad to answer any questions which may be put.

(Mr. McCarthy reads constitution.)

CONSTITUTION OF WASHINGTON STATE BAR ASSOCIATION.

Ariticle I — Name.

This Association shall be known as the Washington State Bar Association.

Article II — Objects.

Section 1. This Association is formed to advance the science of jurisprudence; to promote the administration of justice; to secure proper legislation; to encourage a thorough legal education; to uphold the honor and dignity of the profession of law, and to cultivate and

encourage cordial intercourse among the lawyers of the State of Washington.

Sec. 2. It shall not take any partisan political action, nor endorse or recommend any person for official position.

Article III — Membership.

Section 1. The membership of this Association shall consist of three classes:

(a) Honorary members;

(b) Regular members;

(c) Individual members.

(a) Honorary members shall consist of distinguished non-resident lawyers who are or may from time to time be elected to such membership by a vote of the Association.

(b) Regular members shall consist of members of any affiliated local association so long as such association shall remain in good standing.

(c) Individual members shall consist of such members of the Bar of the State of Washington as are now members hereof, and such as may hereafter be accepted to individual membership herein by the Board of Trustees. After a local association in any particular county has affiliated herewith no resident of such county shall thereafter be accepted to individual membership herein. In the event of any person now having membership herein, or hereafter procuring individual membership, and thereafter a local association of the county of which he is a resident affiliating with this Association, such member on being or becoming a member thereof shall at once be transferred to regular membership herein.

Sec. 2. Immediately upon the adoption hereof the Board of Trustees shall cause the various local bar associations in the several counties to be advised of the means by which such associations may become component members of this Association and invite such local associations to become members hereof and shall prepare and submit proper proposed form of resolution for that purpose. If on or before November 1st, 1920, local associations representing counties having more than 50 per cent of the population of the state by resolution accept membership herein, then this constitution shall in all respects be substituted for the constitution of the Association as at present written, but should such acceptance of membership herein not be procured within said time, then and in that event the constitution of this Association shall be and remain as at present written with the exception that the officers of the Association and the membership dues shall be as herein provided. Through the district vice-presidents and otherwise the Board of Trustees shall use all possible means to secure the affiliation of the principal local bar association in each county, which said assocation shall on accepting membership herein

thereafter be known as the recognized association for the purposes hereof in said county. After one association in any particular county shall have accepted membership in accordance herewith, no other local association shall be recognized in such county unless or until such recognized association shall permit its proper proportion of any annual budget to remain delinquent for a period of more than 30 days. Local affiliated or component associations should be encouraged as far as possible to accept membership into their respective associations coincident with the boundaries of the respective counties in which they exist and to include in their name the name of the county in which they are situated.

Article IV — Officers.

Section 1. The officers of the Association shall be a President, a Secretary-Treasurer, and such number of District Vice-Presidents as shall coincide with the several congressional districts of the state and shall reside and have respective jurisdiction within and be designated by the respective numbers of such congressional districts. The president and the secretary-treasurer shall be elected at the annual meeting of the Association. The vice-presidents shall be appointed by the president immediately after his election.

Sec. 2. The president of the Association shall be ineligible for re-election to such office until one year after the expiration of the term for which he was elected, and no vice-president shall be eligible to serve more than two consecutive terms as vice-president of any particular district.

After 1920 no person shall be elected president at any annual meeting who is a resident of the county in which such meeting is held.

Sec. 3. The Board of Trustees shall be composed of the president, the secretary-treasurer and the district vice-presidents.

Sec. 4. The Trustees shall fill all vacancies until the next annual meeting.

Article V — Elections.

Section 1. The elective officers of this Association shall be elected by ballot at the annual meeting. All officers shall serve until the selection of their successors at the next annual meeting.

Article VI — Meetings.

Section 1. The annual meeting shall be held on the second Thursday of July of each year at such place as the Association shall determine at the preceding annual meeting, and if not so determined, as may thereafter be determined by the Board of Trustees.

When for any reason during any particular year, a time or place different from that herein provided is deemed by the trustees more advantageous, the trustees shall have power to fix the time and place

for such annual meeting as may by them be determined, provided that the annual meeting shall always be held between July first and August fifteenth of each year.

Sec. 2. Special meetings shall be called by the secretary when requested in writing by the president, the board of trustees or twenty-five members of the Association. Such request shall specify the purpose of the meeting. At special meetings no business shall be transacted except that stated in the call, unless by the consent of four-fifths of the members present and voting.

Sec. 3. At all meetings twenty-five members shall constitute a quorum.

Sec. 4. The president shall call a meeting of trustees at such time and place as he may from time to time deem necessary, and must call such meeting when requested by at least two vice-presidents. At all meetings of trustees, voting by proxy shall be permitted and trustees may vote informally by written ballot on any question submitted at such meeting or submitted to them by the president without the calling of any formal meeting.

Article VII — Committees.

Section 1. The standing committees shall be:

A committee on membership, which shall consist of the Board of Trustees; a committee on grievances, a legislative committee, a committee on judiciary and judicial administration, a committee on uniform state laws, a committee on legal education and admission to the bar, a committee on federal legislation, a committee on publications, a committee on obituaries, and a nominating committee.

Sec. 2. A majority of those members of any committee who may be present at any meeting of the Association, unless otherwise provided, shall constitute a quorum of such committee for the purpose of such meeting.

Sec. 3. Such other committees may be appointed or elected from time to time as shall be deemed expedient.

Article VIII — Dues.

Section 1. The dues of regular members of the Association and the funds for the Association shall be provided as follows: Immediately following each annual meeting the Board of Trustees shall determine upon a budget deemed by them reasonably sufficient to meet the expenses of the Association for the ensuing year. They shall thereupon apportion same to the respective counties of the state in proportion to the population of such counties as determined by the last federal census, and shall request the payment of such apportionment through the respective county or local associations. It shall be the particular and special duty of the respective district vice-presidents to cause all counties within their respective districts to raise and remit their

proper proportion of such budget, whether through the recognized county association or otherwise. If there be no recognized or regularly organized association within any particular county within his jurisdiction, it shall be the duty of such vice-president to use his best efforts to cause such local association to be organized. All members of recognized county associations in good standing shall pay no dues.

Honorary members shall pay no dues.

Dues of individual members shall be $4.00 per year, payable on or before October 1st of each year, and delinquent February 1st thereafter.

The apportionment herein provided to be made to the respective counties shall be due and payable to the secretary-treasurer on or before October 1st of each year, and delinquent February 1st thereafter.

When the secretary-treasurer shall receive from any particular county its apportionment for any particular year, he shall keep and retain same in a separate special fund for the use and benefit of such local association from which same was received until he shall have likewise received at least sixty per cent of the total budget for that year, at which time all receipts then and thereafter received for that year shall be paid into the general fund, and unless on or before March 1st of any current year, at least said sixty per cent of such budget shall have been received by the secretary-treasurer, he shall return to the respective associations the money from them received.

Article IX — Suspensions and Expulsions.

Section 1. Any member may be suspended or expelled by a two-thirds vote of the Board of Trustees for misconduct in his relation to the Association or in his personal or professional relations upon being given such hearing and upon such notice as said trustees may prescribe.

Sec. 2. Conviction of any member for crime involving moral turpitude shall at once work a forfeiture of membership in the Association, which forfeiture shall continue until such conviction be set aside or reversed.

Sec. 3. If any member be discharged or suspended from practice in the Supreme or Superior courts, such disbarment shall work a forfeiture of his membership, until such disbarment be set aside or reversed. Reinstatement to practice shall not reinstate to membership in this Association, unless by a vote of the Association upon recommendation of the committee on membership.

Article X — Ethics.

Section 1. The code of ethics adopted by the American Bar Association shall be the rules of ethics of this Association, and all members of this Association shall be deemed to have subscribed thereto and be governed accordingly.

Article XI — Amendments.

Section 1. Amendments may be made to this constitution only at an annual meeting, and by a vote of two-thirds of the members present; but no amendment shall be considered (except by a three-fourths vote of those present), unless notice thereof be given by the secretary in the call for the annual meeting.

(Local Associations will please use this or a similar form in accepting affiliation with the State Association.)

Be it resolved that the.....
Bar Association does hereby accept membership in and affiliate with the Washington State Bar Association.

We, the undersigned, being respectively the president and the secretary of the.....
Bar Association, do hereby certify that the above is a correct copy of resolution passed at a meeting of said Association held.....
....., 1920, and that the annexed sheet marked "Exhibit A" contains the names and present addresses of members of said Association and that we will at convenient times and particularly during the months of January and June of each year transmit revised membership lists to the secretary of the Washington State Bar Association.

Dated....., 1920.

.....
President.

.....
Secretary.

You will note that unless this constitution be adopted by local associations representing counties having more than fifty per cent of the population of the State, it does not become effective. You will also note that any funds sent in by any local associations shall be kept separate for the use and benefit of that local association until the Secretary-Treasurer shall have received at least sixty per cent of the total amount of the budget for the year 1920-1921, and that unless sixty per cent of such budget is received by the Secretary-Treasurer, any

moneys transmitted to the Secretary-Treasurer by any local association shall be returned to such local association or associations.

President Post: How many local associations are there?

Mr. McCarthy: I do not know the exact number; but local associations do exist in King, Pierce, Spokane, Whatcom, Walla Walla, Grays Harbor, Snohomish and Yakima counties; I have no doubt that there are many others. In any event the local associations today represent counties having more than fifty per cent of the population of this state.

I would like also to say a few words as to the budget. For instance, if it is desired to raise $1,500 by the budget system, the apportionment would be as follows: Spokane, $183; King, $277; Pierce, $155; Lincoln, $20; Pacific, $16; Franklin, $7. Our purpose in raising this fund is chiefly to provide funds for the publication of the proceedings.

In this connection I may say that the proceedings for the last two years, at least, have not been published. If $1,500 were raised in this manner there would be sufficient funds to publish these annual proceedings promptly, and in addition to send out a bi-monthly bulletin. If some sort of bulletin could be distributed bi-monthly it would serve as a means of communication between the President and officers and members of the Association. I am strongly of the opinion that such a bulletin should be published, as I think it would arouse interest in the Association. In this regard, let me say that the medical profession has met the necessity for a more enthusiastic membership by forming a national medical association. Under its plan, one who becomes a member of a local association, ipso facto becomes a member of the national association. I believe that we should also strive for some such result and that it is time that a member of a local association should ipso facto become a member of the state association.

With reference to the budget, let me say that the expense to each member will be less if met by local associations than if paid by individual members. The only detail of this proposed constitution which I have heard criticised is that it might disenfranchise some who are now members of the Asso-

ciation. The proposed constitution, however, provides that any person now a member of the Association remains a member of the Association even though he does not belong to a local association. The committee believes, however, that members of this Association, if this constitution is adopted, will see that it is to their advantage also to join a local association. I agree that the plan proposed by us may very likely be improved, but the committee believes that the best course to pursue is to adopt the report of this committee and if it should subsequently be found that the constitution needs to be changed in some detail, that the change should then be made rather than to defeat the entire scheme now.

Mr. R. S. Ludington of Wenatchee: I notice, Mr. McCarthy, that the proposed constitution provides for five vice-presidents, one each to be appointed from the five congressional districts of the state. As you know, there will in all probability be a reapportionment in this state soon. Would it not be better to provide for such number of district vice-presidents as shall coincide with the several congressional districts of the state whatever their number may be?

President Post: Do you make that as an amendment to the committee's report?

Mr. Ludington: I do.

Mr. McCarthy: I think the suggestion is a wise one, and on behalf of the committee I accept the amendment proposed by Mr. Ludington.

Mr. P. C. Sullivan: I see that in order to have this constitution become effective it must be adopted by a sufficient number of local associations by October 1, 1920. I question if it will be possible to secure such adoption by that time, and I move to amend the report of the committee by changing the date from October 1st to November 1, 1920.

Mr. McCarthy: On behalf of the committee I accept that amendment and I now move that the report of the committee as amended be adopted.

Mr. Hovey of Ellensburg: I second the motion.

Judge A. E. Rice of Chehalis: It is now long past the lunch hour and I therefore move that the vote upon the

motion to adopt the report of the committee be made a special order at 10 o'clock tomorrow morning.

President Post: We have a somewhat extensive program for tomorrow morning and will probably have more time this afternoon. Would it not therefore be better, Judge Rice, if this matter be taken up immediately upon the convening of the Association this afternoon?

Judge Rice: In conformity with the suggestion by the President, I amend my motion so that it will now read that the vote upon the motion to adopt the report of the committee be made a special order of business at 1:30 o'clock this afternoon.

Mr. Howard of Bellingham: I would like to have the Secretary give me the names of the Committee on Federal Legislation. I am informed that a report by that committee has been filed and the same has been signed only by the chairman who is now absent in Alaska. I do not agree to one of the recommendations in that report and I would like to ascertain the names of the other members in order to find out if they concur in the views therein expressed.

President Post: The Secretary informs me that the members of the committee, other than the chairman and Judge Howard, are C. H. Hanford, W. G. Graves, and E. M. Hayden.

AFTERNOON SESSION.

Pursuant to Adjournment, Thursday, July 29, 1920, 1:30 P. M.

President Post: As the Association now desires to take action on the motion to adopt the report of the Committee on Membership and Organization, unless I hear some objection the motion will now be put.

(Motion carried.)

President Post: The next order of business is an address by Mr. C. H. Forney of Chehalis.

Mr. Forney reads a letter to the Bar. (See Appendix.)

President Post: The next number on the program this afternoon was to have been an address by the Hon. J. Stanley Webster of Spokane on the Plumb Plan, but he wires me that he has been unavoidably detained in Spokane and cannot be

present. The program committee, however, on yesterday learned that Prof. Clark Prescott Bissett, your Secretary, has prepared an address on the subject of "The Growth of the Constitution," which has not as yet been made public, and I have finally persuaded him to deliver that address to the members of this Association. (Copy of this address was not delivered to the Secretary, and Mr. Bissett being unable to find a copy, the address can not be published).

President Post: The next order of business is the report of the Committee on Uniform State Laws.

Mr. Bissett: Mr. Charles Shepard, the chairman of that committee, is now in New York but the committee has filed with me the following report:

To the Washington State Bar Association:

Your Committee on Uniform State Laws has the honor to report that at the conference of Uniform State Law Commissioners in the year 1919, Mr. Davis, one of the commissioners from this State, was present and that a number of important proposed acts were considered and debated among which was that on occupational diseases, but none of these proposed acts were finally recommended to any of the State legislatures.

At the last session of the Legislature of our State the Uniform Flag Law was enacted. It is a marked improvement on the previous legislation of our State on that subject and forbids the use of the National flag for any advertising or other commercial purposes or its desecration under severe penalties.

Respectfully submitted,

CHARLES E. SHEPARD,
J. W. BROOKS,
H. W. CANFIELD,
WALTER M. HARVEY,
A. R. HILEN,

Committee.

Mr. R. S. Ludington: I move its adoption.

The motion was seconded and carried.

President Post: The next order of business is the report of the Committee on Legal Education and Admission to the Bar.

Secretary Bissett: I have received no report from that committee.

President Post: The next order of business is the report of the Committee on Judiciary and Judicial Administration.

Secretary Bissett: I have received no report from that committee.

President Post: The next order of business is the report of the Committee on Obituaries.

Mr. John Arthur: Mr. President, since the latest report made last year by your Committee on Obituaries more than a score of our brethren at the Bar have passed away. Your committee submits brief sketches of them. (See Appendix.)

An adjournment was herein taken until 10 o'clock a. m., July 30, 1920.

SECOND DAY, MORNING SESSION.

Friday, July 30, 1920, 10 A. M.

President Post: There has been considerable discussion of late concerning the advantages and disadvantages of our direct primary law. Our sister State of Idaho had for several years a law somewhat similar to ours. A year or so ago they radically amended that law. The whole question of conducting elections by direct primary is certainly a most live and interesting one. The Board of Trustees of this Association consequently asked Mr. Jess Hawley of Boise, one of the ablest and most brilliant members of the Idaho State Bar, to deliver an address on the direct primary. I take great pleasure in introducing to you Mr. Hawley.

Mr. Hawley reads address. (See Appendix.)

President Post: I know I express to Mr. Hawley the thanks of all the members of this Association for his instructive and masterly address.

Since our last meeting death has called Judge F. V. Brown, an able lawyer, a fearless judge, a splendid citizen, a man well beloved by us all.

He was a friend to all, but his closest friend was Mr. Harold Preston of Seattle. We, who are here today, need neither written nor spoken memorial of Judge Brown; we will remember him always; but I have asked Mr. Preston to deliver a eulogy upon him in order that those who come after us may know something of this loved and lovable man.

Mr. Preston reads eulogy. (See Appendix.)

AFTERNOON SESSION.

July 30, 1920.

President Post: The first thing on the program this afternoon is a paper by Mr. E. F. Blaine of Seattle, formerly chairman of the Public Service Commission of Washington, on the Public Service Commission Law. You all know Mr. Blaine and any words of introduction on my part would therefore be superfluous.

Mr. Blaine reads paper. (See Appendix.)

President Post: The annual meeting of the Washington State Bar Association would be considered incomplete without the presence of one of the leaders of the Bar of our neighboring province. The most friendly relations have always existed between lawyers of the Province of British Columbia and the lawyers of the State of Washington. At the present time the most friendly relations exist between the people of the Dominion of Canada and the people of the United States; and it is our hope that that friendly relation will ever exist, not only between the people of the United States and the people of the Dominion of Canada, but between all peoples who speak the English language, it matters not where they may live, because where the same language, the same system of laws, the same customs and ideals exist, it is worse than absurd that there should be any difficulties which could not be solved in the most peaceable way. (Applause.) We have with us today the Hon. M. A. MacDonald of Vancouver, K. C. and M. P., who will address us on the subject of "The Law and Public Opinion."

Mr. MacDonald reads paper. (See Appendix.)

President Post: I suggest that the Association rise to its feet in recognition of the respect felt by this Association for this distinguished visitor, and as a token of our gratitude for the highly interesting discourse with which we have just been favored.

A rising vote of thanks was then tendered to Mr. MacDonald.

President Post: Is the Committee on Publications ready to report?

Secretary Bissett: The committee has not filed any written report for the reason that it has done nothing. Its excuse for doing nothing is that it has not had any money to do anything with. The treasury of the Association has been so depleted that it has not been possible to print the proceedings of the past three years. To print the proceedings of the past three years would take approximately $600.00 and after the expenses of this meeting are paid the treasury will be without funds.

President Post: It is and has been perfectly obvious for some time that the Association must raise some money. In the past we have appointed committees for that purpose, but money will never be raised that way. It seems to me that the best way to raise this money is to start a subscription here and now. I will subscribe $25.00.

Like subscriptions were obtained from John P. Hartman, C. W. Howard, E. F. Blaine, Harold Preston, P. M. Troy, Otto B. Rupp, N. C. Richards, George Rummens, C. R. Hovey, Judge Gose, Judge Tolman, T. D. Rockwell, John Sharpstein, Judge Bridges, Judge Holcomb, C. P. Bissett and M. C. Delle; also Tucker & Hyland; Wright, Kelleher, Allen & Hilen; Sullivan & Christian; McCarthy & Edge; Bronson, Robinson & Jones, and Carkeek & McDonald. Subscriptions of $10.00 were offered by the following: Judge Stiles, Judge Main, Charles Murray, Walter Schaffner, F. B. Churchill, C. D. Randall, Will Shafer, W. G. McLaren, G. Desmond and Walter Thompson.

President Post: Is the Committee on Federal Legislation ready to report?

Secretary Bissett: I will read the report of the committee.

To the Washington State Bar Association:

Your Committee on Federal Legislation beg leave to report as follows:

Since the last meeting of your Association Federal legislation enacted covers a great variety of subjects, among which are:

1. The repeal of the Daylight Saving Law.
2. Several Amendments to the War Risk Insurance Law.
3. The Stock-Raising Homestead Act.
4. Regulation of entry of aliens into the United States.
5. Several amendments to the Federal Reserve Act.

6. Regulation of steam vessels owned or operated by the United States Shipping Board.
7. Amending the Copyright Law.
8. Several amendments to the Federal Farm Loan Act.
9. Amending the Anti-Trust Law.
10. The act excluding deleterious articles from the United States mails.
11. Re-districting parts of the states of New York, North Carolina and Kentucky as to judicial districts.
12. Revising the Pension Laws.
13. The Volstead Prohibition Law.
14. The Transportation Act.
15. The Merchant Marine Act, 1920.
16. The Water Power Bill.

The Merchant Marine Act, 1920, in creating a merchant marine of the United States, being a departure in our national policy in an international relation, and the Transportation Act containing, among other things, a fundamental departure from what has hitherto been regarded as vested rights, these two acts of Congress, with others, expressive of the new order, no doubt will give rise to much litigation and will call for frequent judicial interpretation by our Federal courts.

The Volstead Act, while it has received final interpretation as a valid law under the Constitution, by the United States Supreme Court, bids fair, in the process of its execution by the executive department of the government, to transform our Federal district courts into ordinary police courts and by reason of the multiplicity of cases arising from violation of that act, involving from half a pint to a thousand or more gallons of "booze," to seriously block all other litigation both of a private and public character, for a long time to come, unless Congress will grant speedy relief by adequate legislation.

In the opinion of your committee, such legislation should create additional judicial tribunals of a limited jurisdiction to try with the aid of juries the liquor cases, as courts of the first instance, with a right of review on writ of error.

In view of the present congestion of business in the district courts of the United States throughout the country consequent upon the enforcement of the Volstead Act, which congestion will no doubt increase in the future, your committee recommend that the president of this Association be authorized and requested to bring the matter to the attention of our senators and congressmen and to the American Bar Association in time for the latter's action at its annual meeting at St. Louis, Mo., August 25-27, 1920.

Respectfully submitted,

WILLIAM H. GORHAM, Chairman.

Dated, Seattle, July 12, 1920.

C. W. Howard of Bellingham: Mr. President, I now move to lay the report on the table.

The motion was seconded.

Mr. Howard: I am a member of the Committee on Federal Legislation. This report was prepared, I understand, by W. H. Gorham of Seattle, who on account of being compelled to go to Alaska was unable to submit it to the other members of the committee before this meeting. I can not endorse that portion of the report which recommends the creation of additional tribunals of a limited jurisdicton to try cases arising under the Volstead Act. I do not believe it necessary nor advisable to create such additional tribunals. Moreover, I believe that in a short time the number of prosecutions under the Volstead Act will decrease. Shortly after the passage of the Mann Act a large number of prosecutions under that act was commenced, and it seemed at one time as if the dockets of the Federal court would be crowded with cases of that character. Prosecutions under that act, however, are no longer numerous. If, therefore, additional Federal judges are appointed to handle these cases they would soon have little or nothing to occupy their time. I do not believe it for the best interests of the nation or its citizens to place the power of trying and deciding even this class of cases in the hands of commissioners or other inferior tribunals.

Mr. Rupp: The Committee on Federal Legislation was appointed only a short time before the meeting of this Association. I suggested to Mr. Gorham the inclusion of the matter complained of in his report. We both knew that the docket of the Federal Court for the Western District of Washington was extremely congested and that something ought to be done and done promptly to relieve the court. The only means of relieving the court which seemed feasible to Mr. Gorham was the method proposed in the report. Personally, I think it a shame that the courts of the United States are to be clogged with and the time of Federal judges occupied with what has always been regarded a police court business. One of the Federal judges for the Western district is now compelled to go to his office as early as five o'clock in the morning and he

is compelled to remain there until the wee small hours of the night. On arraignment day long lines of men stand at the bar of that court charged with what would ordinarily be regarded as petty offenses. A large part of the important civil business of any state must be tried in the Federal Court. How can judges, the greater portion of whose time is taken up with the trial of this class of business, be able to give proper and prompt consideration to causes of magnitude and importance? I do not believe that this class of petty business will greatly diminish. The prohibition law is here to stay and will remain on the statute books during the life of this generation at least. The violation of it will, in the nature of things, be constant and frequent. It is the law of this country, and like every other law, as long as it remains the law it ought to be respected and will be enforced. The human race has had its stimulant since the dawn of time, and even the most zealous defenders of the prohibitory law recognize that resort to stimulant, even though forbidden by law, can not be immediately inhibited. It is idle to say, therefore, that under present conditions the volume of this litigation will diminish.

Mr. Rummens: I would like to have the Secretary read again the last paragraph of the report. (Upon that being done, he continued:) I agree that the Federal courts are now over-crowded. A week or so ago I was present in court when a man was indicted for having stolen a pair of socks worth fifteen cents. I believe, however, that although there is a large number of prosecutions under the Volstead Act, that that condition will not continue and I am strongly opposed to the creation of any inferior tribunals to handle matters of this kind.

Mr. E. F. Blaine: I am afraid that the action of this Association will be misunderstood if we go on record in favor of courts of limited jurisdiction to try this kind of cases. More than that, there is nothing this Association can do to change this situation. It is purely within the province of Congress. Moreover, it is perfectly manifest that there is considerable difference of opinion among the members of this

Association and I therefore think that the motion to lay this report on the table should be adopted.

Mr. John P. Hartman: The committee, or at least its chairman, has made a report. I think we would be lacking in courtesy if we laid that report on the table. I therefore move you, Mr. President, that, as a substitute for the motion now before the meeting, the report be returned to the committee for a further report at some future date.

Mr. Desmond: I suggest that instead of laying the report on the table that that portion thereof referring to the creation of inferior tribunals to try liquor and other cognate cases, be eliminated from the report and that the remainder of the report be adopted.

Whereupon, upon a vote being taken, the motion to lay the report on the table was adopted.

Mr. Rupp: I now move you that this convention call the attention of the American Bar Association to the overcrowded condition of the calendar of the Federal court and request the American Bar Association to urge Congress to adopt some method of relieving the Federal courts from the petty police court business now being handled by the Federal courts.

Motion seconded.

Mr. Howard: I move to lay this motion on the table.

Motion seconded, but upon vote being taken the motion was lost.

The motion then made by Mr. Rupp was adopted by the Association.

President Post: The next order of business is the report of the Nominating Committee.

Mr. Murray: Mr. John A. Coleman, chairman of that committee, is necessarily absent this afternoon. He has, however, asked me to make the report of the committee.

We, the Nominating Committee of the Washington State Bar Association, submit for the consideration of the Association, the following nominees:

President—Otto B. Rupp, Seattle.

Secretary-Treasurer—William J. Millard, Olympia.

Delegates to American Bar Association—Charles E. Shepard, Seattle; Clark P. Bissett, Seattle; B. S. Grosscup, Tacoma.

Mr. Murry: I now move the adoption of the report.

The motion was seconded.

Mr. Rummens: While I do not think this report needs any discussion, yet I can not help saying this: I think the selections made the very best which could be made, but I also approve them for other reasons. I have been attending the annual meetings of the Bar Association for probably as long a time as any man in this room. When I first commenced to attend, a large number of young men attended, but when a man now under forty is seen at a meeting of this Association it is a rarity, and if such condition is allowed to continue the Association will soon die. You will remember also that the proposed constitution provides for the appointment of five vice presidents. I understand that one of the purposes is to put young men to work. In electing Mr. Rupp you will have elected the youngest president the Association has ever had. For that reason, if no other (and there are others) the adoption of this report will be a good thing for this Association.

Mr. John P. Hartman: I heartily second the motion. Mr. Rupp is not only an exceedingly capable lawyer, but he is also young. I believe that one of the reasons the Bar Association meetings have not been more largely attended is due to the fact that the younger members for some reason no longer attend. I think the election of Mr. Rupp will go a long way in securing the attendance of younger lawyers.

Judge Stiles: I also second the motion that the report of the committee be adopted.

Would it not be well, in making up the program for the ensuing year, for the Committee on Program to arrange a discussion among some of the younger members of the Association, in order that they may feel that they have a voice in and are an integral part of the Association?

The report of the Nominating Committee was then adopted.

President Post: I will appoint the "young" man, Judge Gose, as a committee of one to escort Mr. Rupp to the chair.

Judge Gose: Mr. President, Mr. Rupp.

Mr. Rupp: Mr. President and Gentlemen of the Association: Unlike many members of our profession, I have never

had a desire to hold any political or any judicial position. My sole professional wish is to continue in life as I started—an advocate—ever hoping to be a better one. I would much prefer to be president of this Association than to hold any office in the gift of the people of the State of Washington, for it has always seemed to me that to be honored by the members of your own profession is the greatest honor any man can receive. I take it, therefore, that you will realize that I am deeply grateful to all of you. More I need not say; less I could not help saying.

Before taking up the next order of business, let me say that I do not believe that the lack of young men in this Association is due to the age of the former president of this Association. In the first place, none of them has been old in years, all of them have been young in spirit. In the second place, I think that the failure of the younger members to attend is due largely to a want of professional spirit on their part. How that can be overcome, I do not know but so far as lies in my power I will do my best to see that it is overcome.

A motion to adjourn will now be in order.

Judge Gose: May I suggest that in the selection of district vice presidents the president appoint younger men and men who will put life into the Association?

President Rupp: I will be very glad to carry out Judge Gose's suggestion.

Secretary Bissett: I move that a vote of thanks be tendered to the citizens of Aberdeen and to the Grays Harbor County Bar Association for their hospitality to the members of the Association.

Motion seconded and unanimously carried.

Mr. Hartman: Some of the members of the Association have been in close touch during recent years with the Bar of British Columbia, a Bar of very high character for whom we have a great respect, and I therefore move that we tender to Mr. MacDonald our sincere appreciation for his splendid address and extend to his Association our appreciation of the fraternal greetings extended by them.

Motion seconded and carried by a rising vote.

Mr. Post: One of the speakers on this occasion was a representative of the Bar of Idaho, a very able young man who delivered a splendid address. I would like a similar motion adopted by a rising vote without a second.

A rising vote was then taken.

The meeting adjourned.

APPENDIX

PRESIDENT'S ADDRESS

Frank Truman Post, Spokane.

It seems to be my duty under the by-laws to comment upon recent important legislation. At the special session of the legislature, called for the purpose of lending a helping hand in adopting the 19th amendment to the Constitution of the United States, the members took advantage of the opportunity to pass with considerable haste an act entitled:

"An act providing for the payment of equalized compensation to veterans of the war with the Central Allied Powers, authorizing the issuance and sale of state bonds and the levy of a tax to pay said bonds, making an appropriation, providing for penalties, and providing for the submission of this act to the vote of the people."

What is meant by the expression "equalized compensation" is not revealed in the body of the act. The act itself contains no preface, preamble, whereas or recital defining its object or purpose. The payment of equalized compensation apparently means the payment of compensation to the persons named, which would raise the compensation already received by those persons so that the same would be equal to some other compensation. It cannot be the purpose of the act to make the compensation of the soldiers, sailors and marines in the last war equal to the compensation of the soldiers, sailors and marines in the Spanish American War, as the compensation of the latter was, in fact, less than the compensation of the former. It can hardly be the purpose of the act to give to such soldier, sailor and marine a sum of money which, added to that already received, would equal what he might have earned if some other person had taken his place in the war, and he had worked in the shipyards, or in some other private capacity, as that result is not accomplished. Furthermore, the compensation or bonus given by the act is given equally to the commissioned and non-commissioned officers and privates, without regard to the difference in the compensation received by the officers and privates. It does not equal the compensation as between the privates and officers, but adds the same amount to the compensation thertofore received by each. As a matter of fact it does not equalize the compensation of either or make such compensation equal to any other compensation. Why the use of the expression "equalized compensation" I know not, but I might hazard a guess that it is because the committee acting for some of the parties in interest who caused the great haste in the passage of this bill were of the mind that that expression had a better ring to it than the word "bonus."

The title of the bill says that this payment shall be made to veterans of the war. The body of the act provides that the bonus shall be

given as well to those who had military training for only the major portion of a month as to those who saw service in the trenches in Flanders. The Standard Dictionary defines the word "veteran" as: "One long trained or exercised in any service; one who has grown old in service, especially a soldier, loosely, an aged ex-soldier."

This bill is of peculiar interest to the bar because it involves a question of constitutional law and because it is to be voted upon at the coming election. I will briefly analyze it.

It is without any provision for the payment of any moneys to the soldiers, sailors and marines who rendered service in the Philippines or elsewhere during the Spanish-American War, nor does it contain any provision for the payment of any moneys to the widows, children or dependents of any who died in that service.

It provides that a young man who performed no service under the American flag, either in training camp or in the field, but who, being a resident of this state, voluntarily enlisted in the Canadian, English, French or other allied service shall receive the same compensation as the young man who enlisted under the American flag, or was drafted in our service, except that there shall be subtracted from the bonus given him by the State of Washington any bonus he shall have received from any foreign country.

The amount of the bonus is the sum of $15.00 for each and every month, or major fraction thereof, in the field or in training camp, between April 6th, 1917, and November 11th, 1918. The bonus is the same for those who served in France as for those who served in Camp Lewis or in any other training camp.

The bonus is the same for the officer who received $250.00 per month or more as for the private who received only $30.00 per month.

In case of the death of such soldier, sailor or marine while in the service, the bonus shall be paid to his surviving widow, if he left a widow and she has not remarried, without regard to her wealth or financial ability, or, if his wife or widow be deceased, then to his children, if any, without regard to their financial ability. If, however, such deceased soldier, sailor or marine was unmarried, then such bonus shall be paid to his surviving parents only in case of actual dependency.

Bonds of the State of Washington shall be issued and sold to the amount of $11,000,000.00; provided, however, that if the proceeds of the sale of such bonds shall be insufficient to pay the compensation provided for, then sufficient additional bonds shall be issued and sold.

For the purpose of payment of interest and the retirement of these bonds a tax of one mill upon each dollar of taxable property shall be annually levied; provided, however, that if said tax shall be insufficient for those purposes, then sufficient additional taxes shall be levied.

It is not my purpose to discuss the propriety or wisdom of legislation such as this. A constitutional question of first importance is

involved, and it should be discussed and considered by the bar.

Suppose a majority of the legislature or a majority of the adult inhabitants of this state should be of the opinion that the farmer, the manufacturer, the merchant and generally that class of our citizens sometimes referred to as the capitalistic class, had greatly prospered during the war and since, while the professional class, the salaried class and the wage earners (except those working in the shipyards and in some other employments) had financially suffered because of the increased cost of the necessities of life, would an act of the legislature which attempted to bring about a condition of financial equality by the issuance of state bonds to those who had suffered the losses, to be paid through general taxation, be a valid law under our constitutions?

Suppose a majority of the members of the legislature should be of the opinion that various of the employes of the state might have earned greater compensation during the war had they been employed in private enterprises, would they, or a majority of the people, have the power to enact legislation taxing all the people to give bonuses to equalize the pay of these employes for past services?

Is there any fundamental difference between the two questions last stated and the giving of bonds or moneys to those who have gone into training for military service or have been actually engaged in war?

It is axiomatic that a promise to pay is without validity when the method of payment is through taxation and the power to tax is wanting. It is also axiomatic that the power to tax does not exist when the purpose thereof is not a public purpose. These principles are clearly and tersely stated by the United States Supreme Court as follows:

"The validity of a contract which can only be fulfilled by resort to taxation depends on the power to levy the tax for that purpose." (20 Wall. 655.)

Acts providing for subsidies to encourage enlistment during and pending war are universally upheld because the purpose thereof is clearly a public purpose.

Acts appropriating moneys for the benefit of those who have been disabled in the military service of the nation are also universally upheld.

As that great court, the Supreme Court of Massachusetts, has discussed, in well considered opinions, the questions involved in the act under consideration, a study thereof is to be commended.

In 1882 the Massachusetts legislature passed an act authorizing the town of Acton to raise moneys by taxation for the purpose of paying bounties to soldiers who re-enlisted in a certain Massachusetts regiment of volunteers under the call of the President in October, 1863, and who had never received any bounty for such re-enlistment.

At a general town meeting a majority voted in favor of such taxation. The court said:

"In the case at bar it seems to us clear that the object for which the town of Acton has raised this money is private and not public. The town had made no promise to these soldiers, and is not under any obligation to pay them any bounties. The purpose is not to repay any sum advanced them as an inducement to enlist. The bounty to be paid cannot be regarded in the light of compensation for services rendered, for their services as soldiers were not rendered to the town and the town had nothing to do with their compensation. The war has been over for many years and the payment of these bounties cannot encourage enlistment, in any way affect the public service, or promote the public welfare. The direct primary object is to benefit individuals and not the public. In any view you can take of the statute it is the payment of gratuities to individuals. The principle would be the same if the town should vote a gratuity or a donation to one who had rendered service as an officer or was in any way entitled to its gratuity. This a town has not the power to do even with the sanction of the legislature. A statute conferring such power is unconstitutional because it authorizes raising money by taxation for the exclusive benefit of particular individuals and appropriates money for a private purpose which can only be raised and used for a public object. The right to tax is the right to raise money by assessing the citizens for the support of the government and the use of the state. The term 'taxation' implies the raising of money for public uses and excludes the raising of money for private uses."

In 1904 the Massachusetts legislature requested the opinion of the Supreme Court as to the validity of a proposed statute which would appropriate and give the sum of $125 to every veteran of the Civil War then living, not being a conscript or a substitute, who served in the army or navy of the United States to the credit of the State of Massachusetts during the Civil War and who was honorably discharged; provided he had not received a bounty for such service. I quote briefly from that opinion.

"The object of this act is to give the soldiers, forty years after their enlistment, bounties similar to those others had at the time of their enlistment. Many statutes were enacted in Massachusetts in 1863, 1864 and 1865 in regard to the payment of bounties to volunteers. The ground on which they were held constitutional was not that cities or towns or the state had a right to make gifts to volunteers merely as gratuities or as tokens of appreciation of their patriotism in volunteering to enter the service of the United States. Bounties were not given in such a way for such a purpose. They were given to help cities and towns to fill their quotas from time to time under the call of the president in the necessary defense and support of the government and their protection and preservation of the subjects thereof. This was the public purpose for which the money was raised and which was long ago entirely accomplished. * * * The object of the act as disclosed by these provisions is not to give rewards in recognition of valuable services and thus to promote loyalty and patriotism, but to equalize bounties given to induce enlistments in a particular military service many years ago. Following the law as stated in Meade vs. Acton, we are of the opinion that the proposed expenditure of money is for a use which is private and not public, and that there-

fore the statute is not in conformity with the constitution of the commonwealth." (72 N. E. 95.)

In 1906 the senate of Massachusetts submitted to the Supreme Court the following interrogatory:

"Is it a constitutional exercise of the legislative power of the General Court to enact a law providing for an appropriation of money from the treasury of the commonwealth for the purpose of recognition of valuable services of persons who served to the credit of Massachusetts during the Civil War, and who were honorably discharged from such service, such appropriation to be used either for the payment of sums of money to such persons or for medals or other evidences of appreciation of their services, if, in the opinion of the General Court the public good will be served and loyalty and patriotism promoted by such recognition?"

I quote briefly from the answer of the Supreme Court as follows:

"The general principle that the people can be taxed in this commonwealth only for public purposes is established by many decisions. (Citing them.) The power of the legislature to appropriate money from the treasury of the commonwealth, for any other than a public purpose, is no greater than its power to authorize a city or town to make a like appropriation. It was held by our predecessors in this court, more than 20 years ago, when the events of the Civil War and the successful efforts of Massachusetts to fill its quota were comparatively fresh in their memories, that a statute, authorizing the town of Acton to pay bounties to soldiers who enlisted in a certain regiment in 1864, and were credited to the town, was unconstitutional. This was a unanimous decision, made with deliberation, after hearing arguments of counsel. With the changes that have since been made from time to time in the membership of the court, it never has been overruled or modified. * * * It is a familiar rule of law that a statute is to be interpreted in reference to its purpose and effect as shown by its application to the subject to which it relates. If a bill should appear by its substantive provisions to be a measure for the equalization of bounties among the soldiers of Massachusetts who served in the Civil War, for the payment of moneys to make the results of the contracts of enlistment more serviceable to certain soldiers because the contracts of other soldiers were made on better terms, it would be unconstitutional even if it contained the recital that the payments were to be made for valuable services and with a view to promotion of loyalty and patriotism." (77 N. E. 820.)

In 1915 the advice of the Supreme Court was again asked by the senate. Two questions were propounded. The first one is whether or not the legislature may lawfully authorize the payment from the treasury of moneys for the erection of statues or the bestowal of medals, decorations or other badges of honor in recognition of distinguished and exceptional service to the commonwealth, believing such recognition to be founded on moral and honorable obligations, and that the dignity of the state will be enhanced and the loyalty and patriotism of the people will be thereby promoted. The second question inquires as to the validity of a law for the payment of sums of money to certain veterans of the Civil War who volunteered, believing that such recognition will serve the public good by bringing home to

all minds by visible facts, should the call again come for volunteers, that those who offered their lives in defense of their country will receive some recognition from a grateful people. A proposed statute was submitted to the court. It provided for the payment of $125 to each veteran soldier and sailor then living who volunteered in and served during the Civil War, and who was honorably discharged, and who had received no bounty. Conscripts and substitutes are excluded by the act. The act itself declares that the gratuity is given for the purpose of promoting a spirit of loyalty and patriotism and in recognition of the sacrifice made by them for the commonwealth and for the United States by those veteran soldiers and sailors who volunteered their services in the Civil War, and for the purpose of promoting the public welfare by giving evidence to this and future generations that if danger should again threaten the nation and the call should again come for men, Massachusetts will not forget the service of those who volunteered. The act provides that:

"The gift shall not be a bounty nor a payment in equalization of bounties nor a payment for services rendered, nor a payment for the purpose of making the result of the contracts of enlistment more favorable to them because the contracts of other soldiers were on better terms, but a testimonial for meritorious services such as a commonwealth can honorably give and such as her sons may honorably accept and receive."

It will be observed that this Massachusetts act is the converse of the Washington act. The Massachusetts act expressly and emphatically states that it is not for the purpose of equalizing compensation. The opinion states:

"We are bound to take as true the purposes as declared in the act as those, and those only, which the legislature has in view in its enactment. The good faith which is due from one co-ordinate branch of the government to another requires that assumption. But substance rather than form must be regarded, and if it appears that notwithstanding the affirmations and negations contained in the act, it will and must operate to the payment of bounties similar to those which soldiers received at the time of their enlistment, or an equalization of such bounties, then it must be pronounced unconstitutional. * * * The question then is whether it is within the power of the legislature to authorize the payment as a testimonial for meritorious service of gratuities to persons who come within the terms of the act as we construe it, if the legislature is of the opinion that the payment of such gratuities to such persons in recognition of the sacrifices which they made and of the motives which prompted them to enlist, will tend to encourage the spirit of loyalty and patriotism, and so to promote the public good by affording visible evidence that if hereafter there should be a call for men, the commonwealth will not forget those who volunteered."

In answering the last question the court says:

"It is within the constitutional power of the legislature to authorize payments provided for in the proposed act if, in their judgment, such payments will promote the public good in the manner described. * * * A gift of money has in it an element of private benefit which

does not pertain to the erection of a statue or a monument which all may see, or even to the gift of a medal or other badge of honor which may be handed down as an object of just pride to the donee's descendants. But, as in the case of pensions, it always has been recognized as one of the ways in which meritorious service may be rewarded." (98 N. E. 338.)

It is, of course, manifest that liberal allowances made for the benefit of those who received physical injuries in the late war and that appropriations for medals, badges and monuments for those who performed patriotic service in the war, are for the public good and tend to promote the spirit of loyalty and patriotism and that such acts are valid for that reason. It is also manifest that an appropriation made under a bill like that passed at the last regular session of the legislature for the financial assistance of those who served in the war and who need assistance to get started in civil vocations, is a duty owing by the people to these men and tends to promote loyalty and patriotism and is valid under the constitution. It is, however, a question of doubt whether the indiscriminate giving of moneys to the well-to-do, as well as to those in poor circumstances, to those who only had a few weeks' training in a military camp as well as to those who were in the front line trenches in France, without distinction, tends to promote loyalty and patriotism or tends to a contemptuous regard for public officials who handle public funds.

A statute similar in principle was considered by the Court of Appeals of New York in 1899.

"The statute in substance empowers and directs the supervisors of the several counties upon a petition of a majority of the tax payers to raise by ordinary taxation the money needed to pay to any drafted men, who served personally in the Civil War or paid commutation money, or to the heirs of any such men, the sum of $300 with interest thereon for a period of about 30 years."

That court concluded as follows:

"Every government must possess the inherent right or power to call upon citizens to perform military duties in time of war. The exercise of this power involves the right of self-preservation and that right in the government imposes upon the citizen a corresponding duty to enter such service whenever the emergency arises and it is demanded of him. The government must necessarily be the judge of the necessity for requiring the performance of this duty. * * * The legislature cannot authorize taxation for the purpose of making gifts or paying gratuities to private individuals. It is quite clear that this was the purpose of the act in question. The individuals for whose benefit the tax was to be levied under the act had no claim, legal or equitable, against the town or county where the money was to be raised by taxation. Those who actually served under the conscription only discharged their obligations to the general government. Those who commuted simply paid so much money in order to be relieved from the obligation to render military service. In either case the individual did nothing more than to discharge his obligations to the government as a citizen and hence he had no claim against the locality to reimburse him for what he was obliged to do. The fact

that the majority of the tax payers requested the supervisors to levy the tax was of no importance. Majorities, however potent in many respects, have no power to impose taxes upon the minority for the purpose of raising money to be devoted to gifts or gratuities to individuals." (53 N. E. 1121.)

The Supreme Court of Connecticut has also discussed the question. The legislature had passed an act giving as state aid the sum of $30 each annually to every person resident in the state who had served in the Civil War and had received an honorable discharge and in case of his death to the widow resident in the state. That court said:

"The test of the act before us is: Will it serve a recognized object of government and will it directly promote the welfare of the people of the state in equal measure?"

Also:

"The state may use the public funds to support its citizens in need; it cannot use the public funds as state aid to support its citizens not in need. As applied to individuals, state aid can have no meaning other than support for the needy.

Again:

"State support furnished as state aid indiscriminately to all of these classes, to the needy and to the well-to-do, is beyond the power of legitimate legislation. We know of no state legislation where state aid has been granted without reference to disability, necessity, age or exceptional service. No public service is subserved by taking by taxation the property of the many and giving it under the class of state support to those who are out of the reach of its need. It was, we think, appreciation of the force and applicability of this principle which led the plaintiff in the argument to assume that the single inquiry here was whether the state would reward the soldiers and sailors of the Civil War and their immediate relatives and dependents because of their meritorious service without regard to disability or indigence. If this were indeed the sole question before us, we should still be obliged to hold the act void. We have sustained legislation authorizing bounties and legislation ratifying the action of a town in voting bounties where service in the army or navy of the United States or the procurement of a substitute for such service has been made on the faith of a promise of the bounty. We have refused to sustain such legislation enacted after the performance of the service, making the bounty a mere gratuity for past service not rendered on the faith of a promise." (82 Atl. 1030.)

I have been able to find but three decisions in which are discussed these principles and which might seem to be in any respect in conflict with the decisions of the court of Massachusetts, New York and Connecticut, but even those decisions do not support the validity of the act in question. One of these cases is from South Dakota, and two of them are from Wisconsin. It appears that in South Dakota there was a state militia regiment known as the Fourth South Dakota Infantry. In June, 1916, the governor of that state, acting under instructions from the President, called out this regiment for the purpose of protecting the United States from threatened invasion on the part of

Mexico. That regiment went to Texas and was in active service. In 1917 the legislature passed an act providing that every enlisted man in that regiment should be paid the sum of $75.00 "for the purpose of encouraging military training, the payment for services of the members of said regiment for Federal services upon the Mexican border, and for continued service in the National Guard Reserve of the United States." The statement of the South Dakota Supreme Court of the question under discussion is as follows:

"It is also contended that the appropriation in question is, as a matter of fact, a donation and a violation of the constitution. We are of the opinion that this contention is not well grounded. As will be observed, this appropriation itself states that it was made for the purpose of encouraging military training and service by the payment to the members of the South Dakota National Guard for Federal services upon the Mexican border and for continued services in the National Guard Reserve of the United States. It is therefore very clear that this appropriation in question was not made as a gift nor for motives of charity although the individual members of this regiment were to receive it, but it was made on the ground of and because it was beneficial to the people of this state for purposes of protection to the public. It was made with a view of securing protection to the lives, liberties and property of the citizens of this state. This is the expressly avowed purpose of our state constitution authorizing the legislature to establish and maintain a volunteer national guard or militia." (162 N. W. 379.)

One decision of the Supreme Court of Wisconsin was filed November 17th, 1919. The legislative act under discussion undertook to give to each soldier, sailor, marine and nurse who was in service in the war against Germany and who was a resident of Wisconsin at the time of induction into such service, the sum of $10 for each month of service, with a minimum of $50 "as a token of appreciation of the character and spirit of their patriotic service and to perpetuate such appreciation as a part of the history of Wisconsin." The act also provided for making the same payments to the surviving widow, children or parents of the deceased person who, if living, would be entitled to the bonus. That court conceded in its opinion that unless the purpose was a public purpose the act would be unconstitutional, but held that the act itself showed that it was for a public purpose because of the statements contained therein, which I have quoted above. (175 N. W. 589.)

The later decision of the Supreme Court of Wisconsin was filed February 10th, 1920. It concerns a most appropriate and laudable legislative act. That act provides that a resident of that state who served in the late war for at least three months and who desires to continue his education in any of the various institutions of learning in that state shall be entitled to receive $30 per month while in regular attendance at such institution, but not to exceed a total of $1,080 in lieu of the soldier's bonus provided for by the act discussed in the prior decision.

This act did not state that its purpose was to promote loyalty and patriotism, but the court held that such purpose was so patent that the act would be sustained for that reason, saying:

"This act, unlike that of the Cash Bonus Law (chapter 667, Laws of 1919), does not declare the purpose of the bonus given the recipients to be 'a token of appreciation of the character and spirit of their patriotic service, and to perpetuate such appreciation as a part of the history of Wisconsin.' But it is not essential that the purpose of the act should be declared therein if such purpose can be gathered from the act itself, supplemented, if need be, by contemporary history. In this case there can be no doubt about its purpose. Public declarations have been too frequent and specific, and public feeling is too deep and pervasive to admit at this early day of any mistake relative thereto. Its purpose was to show by material means, of such character and such proportion that it could not be misunderstood as mere idle expressions, the deep gratitude of the people of the state to those who so signally and heroically performed the task that called them into action, and who stamped the American, the Wisconsin, soldier as of the bravest and most efficient among the soldiers of the world. But this purpose, though public, appropriate, and laudable, was not the sole or even the main purpose of the act. The main purpose was to stimulate patriotism, to quicken the perception in our citizens that there is a sacred duty to defend the government in time of need, as well as to demonstrate that such defense is appreciated; that republics are not ungrateful.

"Nor is the gift here made an extra compensation for services rendered, though it must be admitted that a pure gratuity is sometimes called extra compensation. But such compensation, strictly speaking, is given to reimburse the recipient financially for service rendered so that the total money consideration will equal the money value of such service. Its whole sanction lies in the fact that inadequate financial compensation was given in the first instance, and that in order to make it adequate additional compensation must be made. It is granted purely on a money basis without regard to its effect upon the donor, the recipient, or the general public. A gift like this rests upon no such foundation. Its purpose is not to make the soldier financially whole, but to express gratitude and stimulate love of country in those that give, in those that receive, and in the public at large, to the end that an impressive object lesson in patriotism may be engraved in the hearts of all." (176 N. W. 204.)

From the principles so clearly stated in these authorities the following conclusions must be reached:

In a government such as ours, neither the legislature nor a majority of the people has the power to levy a general tax for a private purpose.

That to levy a tax merely to pay moneys to one for services already performed in excess of that agreed to be paid, would be the levying of a tax for a private purpose.

The expenditure of moneys to promote loyalty and patriotism is a public purpose. The appropriation of moneys for pensions, medals, badges and statues for those who have performed military service will be upheld when it is convincingly stated in the act that the purpose thereof is to promote loyalty and patriotism.

It is probable that the courts would sustain an appropriation of money to be given to those who have performed military service when it is stated in the legislative act that such donation will promote loyalty and patriotism, and there is nothing in the act to negative that statement.

When the legislative act makes an appropriation of moneys to be given to those who have performed military service, and expressly states that the purpose thereof is to give additional compensation or, as in this act, to "equalize compensation" for those who have performed such military service, the purpose thereof is a private purpose and the act is invalid.

The recent Federal statute of most interest to the lawyer and student of public questions is perhaps the statute terminating Federal control of railroads, and known as the Transportation Act, and especially that part of it relating to disputes between carriers and employes. Two boards to adjust disputes as to wages and working conditions are provided for. One of these is called an "Adjustment Board," and the other a "Labor Board." The Adjustment Board is established by mutual agreement. The Labor Board is appointed by the President and confirmed by the Senate. The act states that "it shall be the duty of all carriers and their officers, employes and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employes or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employes or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the board which under the provisions of this title is authorized to hear and decide such dispute."

The Adjustment Board shall, upon application of the carrier or organization of employes, or by not less than one hundred unorganized employes, or upon its own motion, or upon a request of the Labor Board, whenever the latter is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing and as soon as possible decide any dispute involving grievances, rules or working conditions.

The Labor Board is composed of nine members to be appointed by the President and confirmed by the Senate; three members thereof are to be representatives of labor to be appointed from nominees offered by employes in such manner as the Interstate Commerce Commission shall prescribe; three members thereof shall be appointed from nominees made by the carriers in such manner as the Commission shall prescribe; three members thereof shall be appointed as representing the public. If either the employes or the carriers fail to offer

nominees, the President shall make the appointments from the different groups and according to the principle stated. Three members of the Labor Board, one from each group, shall be appointed for three years; three for two years and three for one year, and the salaries shall be $10,000 annually.

The Labor Board shall hear and decide any dispute involving grievances, rules or working conditions in respect to which the Adjustment Board signifies that it has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board finds such failure on the part of the Adjustment Board. If an Adjustment Board is not established by mutual agreement, the Labor Board shall, upon the application of the carrier, or of an organization of employes or upon petition of not less than one hundred unorganized employes or upon its own motion, if, in its opinion, the dispute is likely substantially to interrupt commerce, receive for hearing and decide any dispute involving the rules, grievances or working conditions.

The Labor Board also, upon the similar application or petition shall receive for hearing, and decide all disputes with respect to wages or salaries not decided by mutual agreement between the parties. A decision of the Labor Board shall require a concurrence therein of at least five of its members. Where the dispute involves wages or salaries, at least one of the representatives of the public shall concur therein. The Labor Board shall have authority to issue subpoenas, summon witnesses and inspect books and documents. There is no provision in the law compelling the carrier to obey the decision of either board either as to wages or working conditions. Neither is there any condition requiring the employes to obey the decisions of the board. There is a general statement that it shall be the duty of carriers and employes to exert every reasonable effort and adopt every available means to avoid interruption of service, and that if they are unable to agree about the disputed matter, the same shall be referred by the parties to the proper board under this act.

The necessity of providing some legal machinery to handle disputes over wages and working conditions has been so forcibly brought to the attention of the American people that it cannot longer be dodged by those ambitious for political preferment.

We have scarcely recovered from the shock of a nation-wide coal strike. A few men called out the coal miners from Pennslyvania to Washington at a time when there was a coal shortage and coal was needed for the homes as well as by the transportation and manufacturing companies. It was a case of "hands up! Agree to our terms or freeze!" The proposal of the President that the disputed questions should be decided by a board of arbitration appointed by him was declined.

Only a short time before this, and when railroad transportation was more than usually essential to the life of the nation and was

vital to those who afterwards became our allies in the war against Germany, a general railroad strike was threatened by the leaders of the railroad unions. The Adamson law was rushed through Congress under conditions which would avoid a private contract because of coercion or duress.

Under the Transportation Act labor and capital are not on an equality. This is probably inevitable. When labor and capital join hands to construct and operate a public utility, they may contract for equality in the distribution of profits, if any, but the result nevertheless will be inequality of rights and opportunities. After the public utility is put in operation the individual laboring man may become dissatisfied with his vocation and desire to quit and enter upon some other vocation. This he may do. His right so to do is guaranteed under our constitutions. On the other hand, capital cannot quit. The owner may desire to withdraw from the public service in whole or in part, to tear up a part of its street railroad lines or some of its gas mains or a branch of its railroad, but this it cannot ordinarily do without the consent of the municipality or the state from which it obtained the privilege of entering the public service either expressly or by implication. A writ of mandate ordering the company to continue in the public service may be granted at the instance of individuals who are interested in that service as well as at the instance of the state or municipality or the representatives thereof. On the other hand a writ of mandate will not be issued ordering a labor union or any combination of laboring men or any laborer who entered the public service to continue in that service and operate the utility, no matter how vital such operation may be to the general public.

Under the Transportation Act a dispute as to wages or working conditions is to be submitted to the labor board appointed by the President. One-third in membership of that board represents the general public. If the decision of the Labor Board is unsatisfactory to the managers of the railroad company and they conclude it is unfair and unjust they are nevertheless without remedy or relief. While the statute does not provide any method of enforcing such decision or any method of compelling the railroad company to carry out such decision, nevertheless the managers of a railroad company would feel compelled to carry out the same because a refusal so to do would inevitably result in a strike and the strikers would have the sympathy and support of the public and government officials.

It is quite probable that the decisions of the Labor Board will in many instances be deemed by the railroad managers as unfair and unjust because it is but natural that the members of the Labor Board —one-third of whom represent the public and one-third also will be representative of organized labor—will be affected to some extent by the ever present threat of a strike if the decision is not satisfactory to the labor unions. The representatives of the public on the Labor

Board are bound to consider the incalculable damage which would be done to the general public by tying up the railroad transportation of the country. If a decision of the Labor Board did not meet with the entire approval of the heads of the labor unions, there is nothing in the law to prevent a strike. It would seem, however, that this statute does in fact minimize the danger of strikes because the heads of the labor unions will realize the practical difficulties of winning a strike in the face of public sentiment, and the probabilities are that the general public, as well as the governmental officials, would be out of sympathy with a strike called to enforce demands which have been decided by a fair board of arbitration to be unjust or unreasonable.

A government is not fully efficient which fails to guarantee transportation to the public. Railroad transportation is of course vital to the business of the country. Destroy it and general bankruptcy would follow. It is vital to the happiness and prosperity of every man and woman in the country, no matter what vocation he or she may follow or in what enterprises he or she may be interested. What is true of a public service like a railroad is also true to a large extent of some other businesses. At the present time the mining and transportation and selling of coal is a necessity. The problem of enforcing a guaranty of uninterrupted transportation service is not an easy one. It is probably wise that no specific method is set out in the Transportation Act. It is probable that it is best to leave it to an enlightened public sentiment. As a legal proposition the position taken by Mr. Gompers and Mr. Morrison is unsound. In Canada there has been in force for some years a law prohibiting a strike until the matter in dispute has been submitted to a board of arbitration and for a certain number of days after the publication of its decision. The validity of such an act at least as applied to railroads and other public utilities would seem to be clear. Mr. Gompers has said that a man has the constitutional right to quit work. That I concede. One may quit any employment, quit any employer, and enter any other service at any time at his own pleasure. When one quits work he does not go on a strike. When he goes on a strike he lays down his tools with the intention of picking them up again when he has compelled his employer to accede to some demand. A strike is "a combined effort among workmen to compel the master to the concession of a certain demand by preventing the conduct of his business until compliance with the demand." It is a combination among laborers to tie up the industry and to prevent anybody else working in that industry until certain demands have been met, and it is not the intention of the strikers that other people shall take their places in the industry when the demands have been met.

Undoubtedly a statute providing a fair method of settlement by arbitration of disputes between capital and labor as to wages and

working conditions, and declaring a strike unlawful before the decision of such board of arbitration, would not be in contravention of any constitutional provision. And such a statute might also lawfully provide that after the decision of such board of arbitration, any combination or agreement among such employes to cease work and tie up the industry to compel the employer to accede to demands contrary to the decision of the board of arbitration should be deemed an illegal combination or agreement. Whether it would be wise at the present time to enact such legislation is another question. It is to be hoped that it will be unnecessary so to do and that the machinery for settlement of disputes set forth in the transportation act will work to the satisfaction of the three parties in interest.

Is the lawyer drifting away from public service? In other words, are the people ceasing to call upon lawyers of the highest professional standing to perform important public service? Twenty of the twenty-six Presidents of the United States have been lawyers. The next President of the United States will be a newspaper proprietor and editor who never had any legal education. The next Vice-President will be a lawyer but not one who has acquired any great reputation in his profession. In the United State Senate while there are a half dozen lawyers of considerable ability, there seems to be only one whose opinion on an important question of constitutional law would have persuasive influence with the profession. The time has passed when the great leaders in the profession are likely to step from the Bar to the Senate. Survey New England and you will find no Webster, no Choate, no Sumner, no Edmunds, no Hoar. Look at New York, Indiana, Illinois, and the great states in the Mississippi Valley and contemplate the great leaders of the Bar who have in the past adorned the United States Senate. Who are there now from those great Commonwealths? I forbear to mention names but those who are or who have been the leaders of the Bar are not there except perhaps in one instance. The world may be safe for Democracy but the United States is safe for demagogy. There must be a reason. What is it? Has the Seventeenth Amendment to the Constitution of the United States anything to do with the reason? The fathers of the Republic intended that the Senate should be removed from temporary popular clamor, from ill-digested, hysterical public sentiment. They provided that the members of the United States Senate should be elected by the legislatures of the respective states; that the term of office should be for six years, and only one-third of the number should be elected every two years. The fathers intended that, while the members of the lower House of Congress should be all elected every two years and therefore come direct from the people influenced by the temporary sentiment of the people, that legislation having its origin in the House of Representatives would have the cool, careful, thoughtful consideration of a conservative and independent body and

thereby the people would be protected from the evil results of their temporary whims and caprices.

Unfortunately there have been several occasions when the business of the State legislature has been hampered and delayed by a long contest over the election of a United States Senator and there have been instances when money has been illegally used in the election of a United States Senator. In course of time, a Western state under the influence of a most persuasive and eloquent demagogue adopted a state wide direct primary law. The idea that candidates for political office should be nominated by the people direct instead of through representatives had a forceful appeal to those who had only a superficial knowledge of the subject of government. Out of this agitation came eventually the Seventeenth Amendment providing for direct election of senators, and men of most inferior ability have aspired to that great office, and some of them have been elected. Men of great wealth have achieved that ambition. Large sums of money have been spent in such an election. If there was corruption before, there is corruption now. To put it mildly, that great august body has not improved in its personnel since the adoption of the Seventeenth Amendment.

It happened in the past that some of the leaders at the Bar, men who had had long and successful practice and had acquired great reputations for ability and character, had been willing to round out their careers in the United States Senate. And such a lawyer could be elected without any unseemly scramble, without his saying anything demagogic, or doing anything disreputable or undignified. The Seventeenth Amendment has changed this. Such a lawyer is not sufficiently eager to obtain this office and has too much respect for himself to enter into the unseemly scramble and waste his hard earned money or that of his friends in ways that are dark and devious as compelled by the Seventeenth Amendment.

And we wonder whether or not the Seventeenth Amendment has aught to do with section 2 of the Eighteenth Amendment. That section is:

"The Congress and the several states shall have a concurrent power to enforce this article by appropriate legislation."

Did the Anti-Saloon League have the advice of counsel in the preparation of this section? Did the lawyers on the committee in the Senate fail to appreciate the absurdity of that language or were they acting under duress?

Mr. Justice McReynolds says in his brief opinion in the recent decision of the United States Supreme Court in the various cases presented to that court in re Eighteenth Amendment:

"It is impossible now to say with fair certainty what construction should be given to the 18th Amendment. Because of the bewilderment which it creates, a multitude of questions will inevitably arise

and demand solution here. In the circumstances, I prefer to remain free to consider these questions when they arise."

In other decisions of the Supreme Court the expression "concurrent power" has been given a meaning which required that legislation by Congress to be effective should be approved by the state where the power was to be exercisd. Or perhaps it would be more accurate to state that the words "concurrent jurisdiction" given to two states meant that each state had equality of power, legislative, judicial and executive, and that neither state could override the legislation of the other. Those decisions being in existence, and which any lawyer might read, why wasn't the language of the Eighteenth Amendment made clear or at least understandable? The decision of the Supreme Court is bewildering. It is not an opinion which states the reasons as is customary, but is a statement of twelve conclusions. Mr. Chief Justice White writes a brief concurring opinion. Mr. Justice McReynolds concurs only in the disposition of the cases then before the court, refusing to be bound by any construction put upon the Eighteenth Amendment. Mr. Justice McKenna writes a dissenting opinion. I do not glean from the decision that in case of conflict between the Congressional Act and the State Act it has been decided that either act is controlling. It would seem to follow from what is said that both acts might stand where the conflict consisted simply in the definition of intoxicating liquor. For instance, if the Congressional Act defined intoxicating liquor to be liquor containing as much as 1 per cent of alcohol by volume, while the State Act defined intoxicating liquor to be liquor containing 2 per cent of alcohol by volume, one manufacturing liquor containing 1 per cent of alcohol could be prosecuted under the Federal Act but could not be prosecuted under the State Act, while one manufacturing liquor containing 2 per cent of alcohol could be prosecuted under either act. Upon the argument the Government contended that the Congressional Act would be supreme and controlling. The Government also made a secondary contention stated by Justice McKenna as follows:

"The Government seeking relief from the perturbation of mind and opinions produced by departure from the words of section 2, suggests a modification of its contention that, in case of conflict between state legislation and congressional legislation, that of Congress would prevail, but intimating that if state legislation be more drastic than congressional legislation, it might prevail, and in support of the suggestion urges that section 1 is a command to prohibition and that the purpose of section 2 is to enforce the command, and whatever legislation is the most prohibitive, subserves best the command, displaces less restricted legislation, and becomes paramount."

I am not discussing the wisdom of the Eighteenth Amendment. It is a part of the supreme law of the land and legislation in conflict therewith cannot be considered. This part of our Constitution must be enforced with the same vigor as any other part of the Constitution. Those who think it ought to be changed have only one lawful

method of bringing about that change, not by legislation but by an amendment to the Constitution in the manner provided therein for amendment. I am merely philosophizing over the fact that section 2 of that amendment is a masterpiece of cunning or stupidity and will be productive of a great volume of unnecessary litigation. Apparently it was not given the best thought of trained legal minds, and I wonder if that section is one of the results of the folly of the Seventeenth Amendment.

The world is now at fever heat. The world is not safe for democracy and democracy is not safe for the whole world. We Americans are an ingenious, inventive people. No written law, whether a provision in a constitution or a mere statute, could be entirely satisfactory for long. We must tinker with the framework or the machinery. But why be pessimistic? The body politic may receive the germs of all the contagious political diseases but its general health, physical and mental, is so good and its power of resistance so great that these attacks are ordinarily mild and a speedy recovery is ordinarily a certainty. The trained, scholarly lawyer must be the physician. Perhaps there never has been a time when the unselfish service of our profession is more needed than at present. May it be truthfully said of the American lawyer of today what an historian said of Pericles: "He did not so much follow as lead the people because he framed not his words to please them, like one who is gaining power by unworthy means, but was able and dared, on the strength of his high character, even to brave their anger by contradicting their will."

A LETTER TO HIS BROTHERS OF THE BAR

C. H. Forney.

Chehalis, Wash., July 24, 1920.

Mr. Clark P. Bissett, Secretary State Bar Association.

Dear Sir: When, some weeks ago, you notified me of the honor conferred upon me by the trustees, of an invitation to address the State Bar Association, I availed myself of the privilege, it is needless to say, with pleasure and pride. Knowing, however, that it was through grace and not merit, that I was raised to that eminence, I accepted with that lowliness of spirit which characterizes us Christians. But now, on the eve of the assemblage of the bar, I find myself in a situation which I can not but deeply deplore. For I am momentarily awaiting a wire summoning me to a business trip to Canada, which would probably detain me beyond the period of your meeting.

I beg you to assure the bar at its assembly, that it is only the most cogent of reasons which would prevent my attendance. I am sure, too, that you and the members of the bar will accord full faith and credit to my assurance that my contemplated journey is, in fact, a "business trip." Usually, in cases like this, one cannot speak too guardedly. Unjust suspicions will arise which must be averted. Brows will be raised, one eye closed and the finger pointed at him who has legitimate business across the Canadian border. Wherefore it behooves me to speak with candor. On the one hand, my going is voluntary, in the sense that it is not constrained by any exercise of the police power of the state. On the other hand, it is involuntary, in the sense that it will be no indication of preference of mine for alien lands due to the effect of any recent legislation or constitutional modifications of my own beloved country. For why, may I ask, should I adopt so strange a course just before a bar meeting, where all these questions will be considered under a suspension of the rules? Why should I seek honor amongst a strange people, unused to my ways of disposing of bonded goods, when I can stealthily remain at home and "pluck honor from the pale faced 'moon'?"

Nay, I would not mingle with untaught Canadians, who are so little versed in modern political economy, that their government persists in permitting each citizen to waste his own time in resisting his appetite for drink. Little have they learned the lesson of governmental cooperation—the modern method of directing the individual energy along municipal lines to community ends. Why should a man be left to idle his time, dissipate his powers and consume kilo-watt after kilo-watt of will-power in the exercise of self-restraint, when it can be done for him by a well paid constabulary? How pitiful is the

spectacle of a people abandoned by the state and left to labor day after day, raising their own wheat and knitting their own socks, when they might be profitably employed on some useful board or commission at a guaranteed salary, in the oversight of the morals of the commonalty or the dispensation of soft drinks? Let the Canadians follow the path which the Americans have blazed, concentrate willpower and industrialism in the hands of the state, and thus promote the general health, convenience and welfare, the brotherhood of man and the community of goods. But these benighted Canadians see as through a glass darkly. Let us show unto them the light, even through the very bottom of the glass. Let our fellow countrymen display to them the capabilities of a restrained thirst. Behold the Behemoth, who drinketh up a river and hasteth not, who trusteth he can draw up Jordan into his mouth: Even so, let our native drinkers display their talents. Go ye amongst them with due humility, albeit with self-confidence and all your plentiude of reserve power. Doth it grieve you that I go alone? Let not your hearts be troubled. In the Canadian land are many flagons; if it were not so I would have told you. I go to prepare the way for you, and if I go I will come again, that what I have, ye may have also. Greater love hath no man than this, that he lay down his flask for his friend.

But whither I go ye know, and the way ye know. But let me entreat you, dearly beloved, that when ye come to the publicans who sit at the receipt of custom, ye be evermore wary, lest they stretch forth their hands upon you and harden their hearts against you and multiply their signs and wonders in the lands. And peradventure they will strip you of your bottle and deliver it to the judge, and the judge will deliver it to the officer and the officer will re-deliver it to the judge, who will bestow it in the secret chamber of his court. And if the said publicans discover this contraband upon you, they will, in accordance with the statute in such cases made and provided, confiscate not only it, but also that which harbors, conceals and contains the same; and if you are accustomed to carry your liquor on your hip, in the pocket of your trousers, I cannot bear to contemplate the result—not so much for the loss of the garment, but because it might reveal your true attitude towards the law of the land. (Here as elsewhere, I deem it unnecessary to say that I am addressing the bar over your shoulders.)

As little as the Canadians conceive the principles of economics and the law of search, still less do they comprehend the possibilities of prohibition liquors and the making thereof. Under modern American methods, each householder is a manufacturing chemist. The producer and consumer are brought into intimate relation; the long haul eliminated; the value of the output increased even unto $20 per quart, thereby adding enormously to the national wealth and thus making further taxation possible. Demand is created by confiscation of the

supply. Longer boots are worn by our yeomanry, which serves to augment the supply of beef to the hungry poor. Our people are made prosperous and happy; there is sunshine in the home and moonshine in the barn. The product itself is correspondingly increased in strength and efficiency. It is free from the burdens of age; it hath the properties of eternal youth. It raiseth up the young man's feet. It maketh the strong man to say "Ha! Ha!!" and the old man to paw in the valley. He who is filled therewith scorneth the multiude of the city. He cannot be bound with fetters of brass. Thou canst not draw him up with a hook, nor play with him as a bird. He cannot be made afraid; he mocketh at fear. He is given the power to see serpents. His voice is mightily strengthened and men hear him from afar. The ordinances of the city he holdeth for naught. He causeth a disturbance to rise to a riot, a riot to an insurrection, the habeas corpus act is suspended and the Irish Republic proclaimed. Contrast this progressive state of affairs with the backwardness of the Canadians, who as little understand the potency of concentration as the value of dissipation.

So it is with genuine sorrow that I must needs sojourn amongst the flesh pots and imperial quarts of a benighted race, who have no paternal legislature to guide them to sobriety. How tenacious those people are to the antiquated doctrine promulgated centuries ago, which recognized and confirmed so-called "rights" which it was pretended individual men possessed! Some of those old fogy notions, contained, and embodied in documents called, I believe, Magna Charta, Confirmation of Charters, Bill of Rights and Petition of Rights, have cropped up from time to time in the early history of even our own progressive America, and the exploded theory that men, as individuals have rights which are not subject to the oversight of the State, has even tainted our Declaration of Independence, some of our earlier court decisions, now overruled, and the first ten amendments to the National Constitution, curiously called the "Bill of Rights" but now happily corrected by the Eighteenth Amendment. The astounding conception of our ignorant ancestors that any man had the right to his life or to liberty or to the pursuit of happiness, with which the sovereign state has no rightful power to interfere, carries its own refutation. Paper constitutions have recognized such special privileges too long. The obvious remedy is to abolish the constitution, or better yet, elect prohibitionists to the legislature. The courts, too, can do their part, by upholding prohibitionism and progressivism as an exercise of the police power of the state. In this manner, there will be hastened that glorious time when there will be a new heaven and a new earth, and the first heaven and the first earth will pass away, and the dry squad who are the angels of the Lord, will pour out the vials on the earth on the waters and the waters beneath the earth.

But some of those who have recently become addicted to prohibition, hesitate to proceed to the full length of the new progressive doctrine. They have vindicated, it is true, the right of the state against the mere individual. They, and the believers in like doctrines, have also in other lines, pursued a like policy. They have prescribed methods for banking, dairying, embalming, barbering. They have founded a public insurance company of their own for unwilling workmen, which insures everything except domestic tranquillity. They fix prices. They have all but taken over railroads, telegraphs, telephones. They contemplate the taking over of the great industries of manufacture and would have done so ere this, were it not for the unreasonable prejudice of some of the more backward, because of the advocacy by the I. W. W. of the same progressive plan, upheld by the same enlightened reasoning, based upon the same solid foundation of facts and moved thereunto by the same pity for suffering humanity, all to the glory of God, the uplift of civilization and furtherance of the Police Power of the State. It is true that the undiluted, un-Wishkawed prohibitionists, in convention assembled at the grape-juicy city of Lincoln, have extended their helping hands to the farmer, with a platform promise to aid and abet him by "An organized system of co-operative marketing, including public terminals, mills and storage facilities." The superior educational advantages of a trained reformer have made socialistic schemes familiar and acceptable. But those who are still under tutelage and still infest the older parties, are resting after the first lap and hesitate to go on.

But their shrinking is not so much from the substantial reality as from the name. They dread to be classed with socialists and I. W. W.s almost as much as they abhor the Declaration of Independence or Bill of Rights. They scorn individual rights and would willingly obliterate them all, if they could only escape the brand of socialism. What is this which they are seeking to accomplish? What are these nefarious principles against which they invoke the Police Power of the State? Individualism asserts that each man is endowed by his Creator with certain inalienable rights, among which are life, liberty and the pursuit of happiness; that he ought to be left free to do as he pleases, subject only to the right of every other individual to do the same, and that one of the duties of the state is to prevent aggressions one upon the other. On the other hand the prohibitionist denies that individuals have inalienable rights, because one perhaps in a 1,000 might abuse them, and for this expectant abuse of his privileges, he, together with the other 999 must be subject to the supervision of the state. Other more advanced moralists tell us that all liquor drinking is an abuse, however innocuous, and it must be prevented. They concede it to be an abuse of the individual who drinks it, but say the evil is general and national, because an injury

to one of the units of the nation is an injury to the whole nation. So be it. But both of these doctrines are socialist doctrines. The I. W. W. declare that inasmuch as all capitalists except Henry Ford abuse their rights of property, they must surrender that property to the state. The Russian soviet says that the individual is the national unit, who must be subservient to the whole community. The socialist makes no argument which the prohibitionist can refute. Their reasoning, ad hominem is unanswerable. When once you abandon individualism, you embrace socialism. Prohibition is socialism in embryo. It is the assertion of community powers over individual action, whence there is but a step first to state regulation of property, then to control and finally sequestration. And when that time shall have arrived, we shall no longer be a free people.

Many men who ought to know better, call a country free because it has a republican form of government and universal suffrage. But these people put the cart before the horse. Representative government and the right to vote do not constitute freedom, but rather are the means and methods to secure and maintain our liberties. Experience has taught us that it is the most efficient means of the preservation of our individual rights. We have learned the lesson of history that kings and emperors and aristocracies will abuse their power over their people and will subject them to intolerable burdens and galling restraints. It has been found that a representative government is the most efficient means for the preservation of our individual freedom. But, as one of our leading jurists, Elihu Root observed before the American Bar Association there may be such a thing as the tyranny of a majority as well as the tyranny of a kaiser. When our personal freedom is invaded, the evil is as great in a republic as in a monarchy. Personal liberty is a prize; the ballot is the weapon which guards it. But if the weapon hath lost its edge, wherewithal shall the prize be guarded?

Personal liberty is too valuable a prize to be thrown away as 'twere a careless trifle. But it has become the fashion of prohibitionists to laugh at the term "personal freedom" as applied to rights which their laws have taken away, and they justify their mirth by averring that liquor drinking is an evil to the drinker and a menace to society through its effect on each one. They say to the man with a mug in his hand: "If you absorb that foam, you may perhaps spend yet another nickel which your family may need for ice cream, and next week your appetite will expand into fifteen cents worth; your family will be driven to the poor house and yourself be an expensive inmate of the jail, all to the depletion of the public revenue which we might usefully employ in building a municipal creamery for the general good." Their doctrine amounts to this: It is an assertion of the power and right of the majority to compel every person to be good according to the standard of ethics set up by the majority, because

good men make a good, prosperous and happy nation. In the final and remote effect of goodness upon the aggregate of society, they find their justification. Supervision of the morals of the man is justifiable, they declare, because of its indirect consequences to the state. They would prevent him from becoming bad by the removal of his freedom of choice.

It is against this monstrous doctrine that I raise my voice to protest. In the domain of morals, and private conduct, there can be no earthly tyrant. In this respect, individual action possesses an analogy to judicial independence. Courts can brook no external dictation. A great jurist has said that the power of the judge to decide carries with it the power to decide wrong. This is a deep-lying truth which lawyers will appreciate, but which to the layman might appear a solecism. So also is it with personal rights. In the regulation of the private conduct of a man, which does not immediately encroach upon others, he is a judge. He must be left to his decision untrammelled by external compulsion. His right to decide at all is the right to decide either way, rightly or wrongly. As the judiciary can preserve its independence in no other way, so neither can a man. As the freedom of courts would disappear if they must decide according to the vote of a North Dakota grange, so does the freedom of a man vanish, when his appetite and his cellar become the subjects of investigation by a tax-eating dry squad.

Wherefore I say that the claim of the prohibitionist to regulate private conduct in advance of any invasion of the rights of others, but only in anticipation thereof, is monstrous. And I set over against it the principle upon which our republic was founded, that the citizen possesses the inalienable right to remain unmolested in his private affairs until the commission of some overt act of aggression against similar rights of his fellow citizens separately or in the aggregate. When once you go beyond this, you have opened the door to socialism. which asserts the right of the state to superintend its citizens, not only in their private conduct, but in everything else. By the promulgation of your doctrine, you have furnished the socialist with his ammunition. You have set your steam roller in motion, but how can you stop it? Be not deceived. Your arguments in support of the paramount right of the state as against the human being, are being used by every professor of communism and by every attorney who defends a syndicalist. According to you and according to them, it is the community as a whole that possesses inalienable rights and the individual must yield himself up to the soviet and govern his conduct in morals and in industry according as it willeth. The prohibitionist has permitted the socialist camel to thrust its nose into the cave. Let him blame only himself when the camel shall have extruded him from his lair.

Against these subtle beginnings of socialism, I, for myself, oppose

my passive resistance. It is the first small trickling crevice in the dike which demands our attention, if we would prevent our total submergence by an overwhelming flood. Behold the example of our revolutionary fathers. Did they await their total subjection to a tyrant, or did they revolt at a tax on tea? Let it be so with us. I am one who am old fashioned, perhaps, but who still feel a thrill at the remembrance of our revolution, and who can still refrain from laughter at the words "personal freedom." They are words which John Hancock did not hold up to ridicule when he affixed his bold signature to the document proclaiming our independence. They are words which did not provoke the mirth of that immortal man who subscribed to the proclamation of emancipation the name of A. Lincoln. They are celebrated in our national song and symbolized by our national flag and in their behalf our ancestors pledged their lives, their fortunes and their sacred honor. And yet, forsooth, the sentiments of personal liberty move the prohibitionist to hilarious guffaws and raucous cachinnations.

Far be it from me to deliver an eulogium on liquor drinking or upon the abuse of the practice. I hold no brief for brewers. I appear as amicus curiae for myself and all others similarily situated. What I insist upon is the vested right, which I proclaim to be mine, of refusing a drink without the intervention of any court, and in the absence of a lean and hungry constable or a prowling, under-paid dry squad. So, also, I claim the right, when my system requires a stimulant, to partake thereof without a permit from some theoretical, bottle-nosed prohibitionist, who drinketh in secret and giveth his neighbor none.

All forms of socialism, including prohibition and progressivism and I. W. W.ism, are based upon the attractive theory of prevention of evil before it can be committed, by means of the fatherly guidance by the state of its citizens. Instead of punishing the criminal, they would prevent crime by a paternal oversight of both the good and the bad, by removing temptation. There will be no drunkards if there be no intoxicants to be drunk. Stealing will be unknown if there is nothing to steal; therefore let private ownership be abolished and title vested in the community. Let there be tithings and hundreds attended to by deacons. We have the beginnings even now. Some of our more zealous superior courts have their salaried old women game wardens to round up our youth and guard their morals. In those days, the speed limit will be regulated by low gearing. Prohibit the making of six-shooters and there will be no murder; no arson when matches are abolished. Chastity will spread over the land as a garment of snow, when the tempter is disarmed and virility is withheld at the source.

I wish it to be known and fully understood that my voice is raised in protest against all forms of socialism, both in doctrine and practice.

Mine may be the voice of one crying in the wilderness, but it may reach some receptive ears. And especially do I conceive that my words will be heard and considered by the bar of the state, whose membership constitutes the "choice and master spirits of the time," the guides of public opinion, the leaders of legislation and the opposers of the isms of doctrinnaires. Consider well by what perils we are encompassed, whither we are drifting and by what forces impelled. Ye, to whom the frosting of hair hath brought wisdom, compare the times of your youth with the seething conditions of today. If our retrospect be extended to the beginning of our nation, the contrast is still more pronounced. Surely we have become what men call progressive. It is this tendency of ours to this so-called progressivism, in which I conceive our greatest danger consists. It is nothing more or less than partial socialism, a name from which most Americans shrink, but the realization of which many Americans contemplate with complacency. Is this tendency good, or is it bad? If good, it needs no efforts of ours to accelerate its progress; for its momentum has multiplied as we looked on, even beyond the hopes of the most sanguine, and almost to the despair of the patriotic. If it be bad, nothing can be plainer than the nature of the duty which it is ours to undertake. That it is bad, I have no hesitancy in asserting.

Complete socialism is the entire undertaking by the state of the totality of its industrialism and of its mental and moral activities. It will be sole producer of all the wealth and in such forms only as it shall see fit to produce. This involves the status of every person within its borders. Each is an employee of the state. The products of his energies are the common property of the community and he must regulate his conduct according to the dictates of his master, the state, and take only such as his master doles out to him. It is the merger of each individual into the aggregate mass of the populace. He does nothing except what he is told to do and gets nothing except what is given to him. It is the complete subjection of the individual to the state. In other words, it is slavery. That this is a fair description of the socialistic state no one can gainsay. And the mere description is sufficient to insure its condemnation, save only by the more radical progressives in our midst.

But many, if not most of you will say that while complete socialism is an evil, nevertheless the government may and ought to adopt and undertake some of these things, and at the same time will indignantly repudiate the name "socialism" as not being appropriately applied to their partial use of such a system. But those who make this contention are merely seeking to evade the responsibility for their own Frankenstein. They laud the consummation of their own ideals, but condemn others who seek to accomplish similar ends. Let us take an example. Many, if not most people, even amongst conservative

men, would willingly give their suffrages in favor of a municipally owned system of water works, for the purpose of furnishing to the city and its inhabitants, a supply of pure, wholesome water for domestic, sanitary and manufacturing purposes. But these same good people may oppose the acquisition and control of a street railway for the transportation of its inhabitants. Some of the most advanced progressives, undeterred by examples of governmental failures, may favor the taking and operation of the entire railway and transportation system of the country. But even they might not advocate but rather oppose the taking over by the state or nation of the flouring or saw mills. The I. W. W. threaten to take over the factories of the nation, while the conservative-progressives, as we might name them, wish to acquire only what they term, as it pleases them, "public utilities." What if each one of these various sects were to accomplish its purpose? Would we not have communism in its entirety, to which each one has contributed his share, one a mill, another a warehouse, another a light plant and another a railroad? The whole is the sum of its parts. Complete socialism, if that misfortune befall us, will come by degrees. We will be made used to it gradually, by the adoption, first of mild measures. At the present time, public utilities, according to the majority, do not include factories and farms. But every observant thinker who has watched the trend of events during the past generation, knows that it is not an insuperable obstacle, in the terminology of a progressing Progressive, to revise the definition of the phrase "public utility."

Just in the same manner as the industrial reformer creeps up on his prey, does the overseer of the public morals stalk his game. First liquor must be taken away from the good, the bad and the indifferent. It is not a far cry to tobacco? Next people will be forbidden from frequenting pool halls and billiard parlors and other similar resorts. It is not inconceivable that by that time, clubs and lodges will be taboo. That will logically lead to the prevention of males running at large after curfew. But state ownership of industries will have kept pace with other moral and beneficial legislation, and then each man will have his hours, both day and night, marked out for him, according to the will of the Chief Commissioner or the Reeve of the Parish.

It is quite possible that many if not all of you may laugh my fears to scorn and pooh pooh my warnings of the coming of communism. But it is only a few years ago that you likewise would have scorned one who prophesied the condition in which we now find ourselves. Nay, do but recollect your own sentiments twenty years ago, when you laughed at prohibition and see now, how that same ism makes every politician afraid. The little, harmless socialistic enterprises in which so many cities and towns and even the state and national government are engaged, are heavily taxing our resources. Who would have thought, on the adoption of our state constitution, that appropria-

tions would have increased from a few hundred thousand to more than twenty millions at the last legislative session? Examine the last tax receipt on your home, and see if it is not equal for a receipt for rent. What does this mean? It means the support of commissions, boards, strange officials with high sounding names, dry squads, administrators of this and of that so-called public utility. It means money extorted from us by socialistic expenditures. It means that by so much as we are compelled to pay for these purposes, by so much are we compelled to labor as the servant of the state. Taxes which we pay for legitimate public purposes are willingly paid by us all, because we receive their equivalent in protection of our persons, our property and our legally enforcible rights. But money wrung from us to be invested in the losing ventures of communist schemes, nominally for the public welfare, but really a sort of social sabotage, is a wrongful aggression of the state.

All this has happened in thirty years, something that no man then would have believed would have come to pass. We are all now used to municipal ownership which was strange in those days. You laugh at my forebodings of the future. But I only say what you all know when I tell you that even now much legislation is germinating in both the state and national hatchery, of still more strange nature, which will surely spawn a beautiful run of taxes. It is the interest of a few well organized beneficiaries to urge them and no one is specially interested in opposition. Consequently they are more than likely to be enacted. And is any one so blind that he will not see that what we now have and what is contemplated will not be the fertile mother of a new brood of communistic legislation? Be not deceived. The signs betoken more and more of this kind of law-making, and when it comes blame no one but yourselves.

It was not so with our forefathers, the Washingtons, the Jeffersons, the Hamiltons, these founders of our liberties, those whom every one praises and then forgets. Did they suffer privations for eight years of warfare to bestow greater powers on parliament? Or did they pledge their lives, their fortunes and their sacred honor to repel aggressions upon individual rights? Did they petition the king for redress in the most humble terms that he might restrain them from too much freedom and to lay upon them higher taxes? Or did they proclaim to a candid world that he had "erected a multiude of new offices and sent hither swarms of officers to harass our people and eat out their substance?" And now, brethren of the bar, is it not an appropriate time to re-declare our independence and to re-assert our rights in the very words of that immortal instrument? Are we so afraid that we tremble even as a politician trembleth, lest the preacher and the deacon declare against him?

Our revolutionary fathers displayed the same exalted spirit as their own forefathers who fought at Runnymede. They, likewise, far

from demanding laws to supervise and control their conduct, regulate their business or subject their fiefs to more scutage, tallage, aids, wardships and burgage, compelled guaranties for their own personal rights. Such have been the notions of our ancestors. It was for the security of individual rights that Magna Chartas have been wrested from kings and Declarations of Independence levelled at tyrants. But now, behold our modern patriot! How like a fawning publican he looks! How can I spend money for my constituents? How can I get an appropriation for your city? How can I establish some business in your community at the community's expense—a general store or a public warehouse? So say some of them—not all. There are noble exceptions; some of them are members of this bar; some of them reside in your very midst. These let us honor, even as our ancestors are honored.

In these critical times when each community is absorbing socialism, it behooves us all to commence an effective resistance. Public ownership is advancing with giant strides. Every day some municipality is acquiring some new kind of public utility, a street railway, or a telephone system or what not. Those who approve will soon approve ownership of railroads, telegraphs, shipping, warehouses and flouring mills. Many already advocate state ownership of land through confiscation by means of single tax, and one state of the union has already adopted it. The excuse heard everywhere is that private enterprise involves misery and intolerable conditions and that capital secures more than its just share. Doubtless there is much misery and many hardships, and many arise through the injustice of fellowmen. But the remedy of the thoroughgoing, as well as the partial, socialist, is worse than the disease. Rather let us bear the ills we have than fly to others we know not of. For all socialism is slavery—complete slavery when it is complete, and partial, when it is partial. Individualism is the only freedom. If we resist not each step of this new slavery, its momentum will presently become so great that human power cannot check it.

Individualism and socialism are mighty opposites. There is and there can be no peace between them—nay, no amnesty. Then let the battle rage until every ramification of socialism is extirpated, or until every man shall render himself up to governmental supervision and control, and become the slave of the state.

You have, my dear sir, my free consent to use this in any manner which propriety suggests, even to the extent of communicating it to my fellow members of the bar, after due censorship and expurgation. May this, as well as all the buried treasures of the fair city of Aberdeen, instill into my brethren a new spirit. Believe me, Mr. Secretary and your fellow trustees, to be

Your most faithful and obedient servant,

C. H. FORNEY.

REPORT OF COMMITTEE ON OBITUARIES

Aberdeen, Washington, July 29th, 1920.

Hon. Frank T. Post, President:

Since the latest report, made last year by your Committee on Obituaries, more than a score of our brethren at the Bar have passed away. We submit brief sketches of them:

ARTHUR H. KENYON.

On August 2nd, 1919, Arthur H. Kenyon, of Spokane, was struck by an automobile about one mile south of Springdale. He died within three hours afterwards. He had resided in Spokane for thirty years, reaching there from South Dakota. He had practiced law for a quarter of a century, but had in later years devoted most of his time to the development of mining properties in which he was interested. He left a widow and four children. For four years he served as United States Commissioner when Judge C. H. Hanford was on the Federal bench.

JAMES F. McELROY.

Sunday morning, August 24th, 1919, James F. McElroy departed this life at the age of fifty-five years, forty-eight of which he had passed in Seattle, having come here when a boy of seven. He was one of the early graduates of the University of Washington; having been a member of the second class that finished the full collegiate course at that institution, and being the first University graduate to be elected to public office; he was born at Machias, Maine, on January 3rd, 1864. He had studied law at Ann Arbor, Michigan, where he was graduated in 1889; in 1896 he was elected prosecuting attorney of King county; and in 1898 he was re-elected to that office. While serving in that capacity he conducted the suit of King county to condemn the right-of-way for the Lake Washington canal; and for his efficiency he received extensive praise on all hands. He was a prominent figure in Democratic politics in the state as well as in King county; but several years prior to his decease he withdrew from political activity. Several years ago he had undergone an operation from which he never fully recovered. He had large property interests throughout King county and was one of its substantial men. Few men were more personally popular than Mr. McElroy; in all classes of the community he was esteemed for his geniality, his benevolent

disposition and his fine civic spirit. His untimely death was generally mourned.

SAMUEL MORRISON.

A resident of Seattle for sixteen years, and prominent in public life as deputy prosecuting attorney of King county, and as a member of the library board of directors, Samuel Morrison died in Seattle on September 13th, 1919. He had come to that city from St. Paul, Minnesota, where he had served as probate judge and enjoyed general confidence. He was sixty-one years of age. He was a member of Seattle Council, Knights of Columbus, and of Seattle Lodge No. 92, Benevolent Protective Order of Elks; in both of which organizations he was highly esteemed.

GEORGE VENABLE SMITH.

Although he had removed many years ago from Seattle to Port Angeles, yet the old-timers at our Bar have pleasant recollections of George Venable Smith, who died at Port Angeles on September 29th, 1919. In the early '80s he was a well-known figure in Seattle. In 1886, he removed to Port Angeles and became one of the founders of the Puget Sound Co-operative Colony, of which he was the first president. He was born in Hopkinsville, Kentucky, February 22nd, 1843. He entered upon the practice of law at an early age and engaged in it in Salt Lake City, California and Oregon. The high esteem in which he was held at Port Angeles was well manifested by the closing of all places of business for an hour and a half on the afternoon of the day of his funeral. Our able brother, William B. Ritchie, of that city, delivered the eulogy on him to the Lodge of Elks, in the course of which he said:

"Our departed brother was a man of whom any community might well feel proud. A man of high and ennobling ideals, and talented far above the average, his extreme love of humanity transcended all his other virtues. It seems to me that it must have been just such a character that inspired Leigh Hunt to write that beautiful poem to the Religion of Humanity, 'Abou Ben Adhem.' On the ashes of the Puget Sound Co-operative Colony, which he founded, there has been raised the present city of Port Angeles, which stands like a beautiful gem on the shores of the Strait of Juan de Fuca, over which mighty snow-clad peaks of the Olympic mountains keep constant vigil. That city stands today a living monument to his energy, his ability, and his foresight."

JAMES McNAUGHT.

Another prominent figure in Seattle in early days, but who had removed first to St. Paul and then to the City of New York, James McNaught, died at Tarrytown, New York, on October 15th, 1919, while on a visit to his daughter, Mrs. Ernest R. Ling. He had rushed to the station to catch a train. He dropped dead as he went to sit down on one of the benches. In 1867 he came to Seattle when that city was a mere village. He was born on September 9th, 1842, in Lexington, McLean county, Illinois. He received his education at the Wesleyan University of that state and in the law department of the University of Chicago. When he came to Seattle there were but two other attorneys practicing there—Isaac M. Hall and John J. McGilvra. So favorably did he impress the little community that within a year after his arrival he was elected president of the Seattle Library Association. In 1871 he entered into law partnership with John Leary, under the firm name of McNaught & Leary. This firm continued for seven years, at the end of which Mr. Leary retired from practice and Mr. McNaught took into partnership with him his brother, Joseph F. McNaught. Three years later the firm was enlarged by the addition of Governor Elisha P. Ferry and John H. Mitchell, Jr., the new name becoming McNaught, Ferry, McNaught & Mitchell. The firm represented the Northern Pacific Railroad Company on Puget Sound. In 1887 Mr. McNaught was appointed general western counsel for the company, and then removed to the city of St. Paul. In the autumn of 1889 he was promoted to be chief solicitor of the company, with headquarters in New York City. He served as president of the Northern Pacific and Manitoba Railroad in 1891, which office he held for a number of years. In 1872 he was married to Miss Agnes Hyde, of a prominent pioneer family, who passed away in the spring of 1918.

Some years ago Mr. McNaught retired from active business, but kept his residence in New York. In June, 1919, he visited Seattle, and was almost unanimously elected as the president of the Pioneer Society of the State of Washington. He valued this distinction, coming as it did from old friends many years after he had given up his residence in this state.

WARREN ORT GRIMM.

At Centralia, Lewis county, on November 11, 1919, Warren Ort Grimm was participating in a celebration of the anniversary of the signing of the Armistice in the great world war. While leading his comrades in the parade he was shot down and murdered in cold blood. He was born at Lewiston, Mifflin county, Pennsylvania, on March 9, 1888, and moved to Centralia, Washington, with his family

when he was two years old. He attended the public schools there and was graduated from Centralia High School in 1908. During his school days he was an enthusiastic participant in all athletics—baseball, basketball and football.

In the fall of 1908 he entered the University of Washington. He made the position of end on the U. of W. football team his first year and played in this position for four years, winning his letter each year and receiving a blanket his senior year.

While in the university he studied law. He was a member of Sigma Nu fraternity, Phi Delta Phi, honorary law fraternity; Oval Club and the Fir Tree Society. He was graduated from the law school in 1912 and he began the practice of law in Centralia. Ultimately he entered into partnership with his brother, Huber Grimm. This firm continued until the spring of 1917, when Warren left to attend the Army Officers' Training School at the Presidio, San Francisco, California. Here he obtained a commission as first lieutenant, and was attached to the regular army at Camp Fremont, Califoirnia.

In August, 1918, he left for Siberia with the American Expedition, and remained there until April, 1919, when he returned to the United States. While in Siberia, on account of his law training, he had opportunity to defend many soldiers who were court-martialed. He was afterwards appointed as judge advocate. While in Siberia he was with Company "I," 31st Infantry, A. E. F., and had command of the legation guard at the embassy at Harbin. A short time before his death he had been elected commander of the Grant Hodge Post of the American Legion.

He was married to Anna Verna Barstad, of Spokane, Washington, a graduate of the University of Washington, on April 15, 1918. A daughter, Shirley Ann Grimm, was born. On his return to Centralia he resumed the practice of law, which he continued until the time of his death.

EARLE B. BROCKWAY.

At the age of forty-four years Earle B. Brockway was accidentally drowned while skating near Custer station on Lake Steilacoom on December 8, 1919. He was born in Concordia, Iowa, on January 1, 1875, and received his education in that state. He was graduated from the law department of the University of Iowa. Shortly after graduation he entered the employ of the West Publishing Company of St. Paul as a member of the editorial staff of that concern. In 1906 he removed to Tacoma and entered upon the practice of law as a member of the firm of Boyle, Warburton, Quick & Brockway. In 1907 he withdrew from the firm. When John M. Boyle was appointed United States marshal, the firm became Warburton & Brockway. Mr.

Brockway was subsequently appointed first assistant United States district attorney and the partnership was dissolved. He later became United States commissioner. He was married and was survived by his wife, a son and a daughter.

JOHN G. JANICKE.

At Fall City, King county, on December 18, 1919, John G. Janicke died. He was born in Leipsig, Germany, on January 18th, 1827. He came to the United States in the year 1848, and became a citizen on July 7, 1856. On September 16, 1861, he enlisted in the army of the United States, then engaged in the Civil War, and was made sergeant of Company "G," 5th Iowa Cavalry. On January 28, 1863, he was discharged for disability. In that year he was married to Mrs. Elizabeth Williams. The next year, September 8, 1864, he returned to the military service and was made second lieutenant of Company "G" of the 4th Regiment of Minnesota Volunteer Infantry. He was promoted to first lieutenant and mustered out at the close of the war in 1865. In July, 1871, he migrated to the Pacific Coast and made Seattle his home. He located on a homestead near Fall City and continued to live thereon the remainder of his life. After having been engaged in surveying and locating settlers, he studied law and was admitted to the bar on March 24th, 1891. For some time he was connected with the law firm of Thompson, Edsen & Humphries. He was a public-spirited man and wielded large influence in his community.

JAMES H. NAYLOR.

At Everett on December 29th, 1919, James H. Naylor, a pioneer attorney of that city, and prosecuting attorney of Snohomish county for two terms, died at the age of seventy-one. He was born in Oregon in 1848. In Chehalis, Centralia and in Yakima he practiced law and became widely known as a specialist in defending criminal cases. He removed to Everett in the early '90s and resided there the remainder of his life.

LEWIS J. NELSON.

In Seattle, on January 19, 1920, Lewis J. Nelson, of Leavenworth, passed away at the Columbus Sanitarium. He was born in Barrie, Canada, fifty-three years previously. For a number of years he made his home in Evanston, Illinois, and was a student in the Northwestern

University. He was later graduated from the Chicago College of Law; practiced in Chicago for a while and removed to Leavenworth sixteen years prior to his death. He served as president of the Chelan County Bar Association. He was survived by his wife and four daughters.

DWIGHT E. HODGE.

At Centralia on January 29th, 1920, following a brief illness with pneumonia, Dwight E. Hodge died at the age of forty-one years. He was born at Marion, Kansas, and lived there during his boyhood days. He was graduated from the Marion High School with highest honors in his class. Immediately thereafter he entered Washburn College at Topeka, Kansas, through which he worked his way, his father having suffered financial reverses. Returning from college, he practiced law for some time in his native town. About the year 1904 he removed to Lewiston, Idaho. Two years afterwards he was elected county attorney of Nez Perce county, Idaho, and served in that office for two terms. Subsequently he practiced law at Marshfield, Oregon. In September, 1919, he removed to Centralia and began the practice there. He was unmarried.

JAMES J. ANDERSON.

In Tacoma, on February 13, 1920, James J. Anderson, long prominent in Democratic politics in Pierce county, a veteran of the Civil War on the Confederate side and a resident of Tacoma for twenty-seven years, passed away after an illness of several months, at the age of seventy-one years. He came to Pierce county in the administration of President Cleveland as one of a Federal commission of three in the sale of lands of the Puyallup Indian Reservation lying along the northeast side of Commencement bay. He had been a delegate to many Democratic national conventions and chairman of county committees of his party in various places. He served as city attorney for a term in Tacoma. After the war he located in Nashville, Illinois, where he was editor and publisher of the Nashville Democrat and served a term in the state legislature. A few years prior to coming to the State of Washington he was appointed Traveling Indian agent for the Department of the Interior to inspect Indian agencies and reservations. His last active participation in newspaper work was in 1894 and 1895 when he was an editorial writer on the Tacoma News, then edited by Albert Johnson, now a representative in Congress from that district. He is survived by his wife, and relatives in the Middle West.

ARCHIBALD M. MAJOR.

In Seattle on February 18, 1920, Archibald M. Major died. He was born in Cincinnati, Ohio, on January 31, 1892. He came with his parents, Rev. and Mrs. A. W. Major, to Seattle, in Octboer, 1893, and received his education in the public schools of that city. He was graduated from the Lincoln High School in the class of 1909 as the valedictorian of that class. He was graduated from the University of Washington in 1913 and received the degree of bachelor of arts in journalism. He took a preparatory course in law at the law school of the George Washington University, in Washington, D. C., in 1913 and 1914. He returned to Seattle in 1915 and entered the law department of the University of Washington, taking his degree of bachelor of laws in 1916. He was admitted to the bar and formed a partnership with Corwin S. Shank. He was a member of the Seattle Association.

Mr. Major was recognized as one of the most promising of the younger lawyers at the bar. He was an accomplished writer, and he edited several of the school journals during his attendance at high school and at the University, besides being a contributor to the daily newspapers. On September 24th, 1919, he was married to Miss Enid Gulliford, who survives him.

HERBERT T. GRANGER.

On March 6, 1920, in Seattle, Herbert T. Granger passed away. He was born in Port Whidby, Ontario, Canada, on October 3rd, 1857, although his parents were natives of the state of New York; they were temporarily residing in Canada and they returned to the United States when Herbert was about a year old. He received his education in the Middle West. He resided for thirty-eight years in Kansas City, Missouri, from whch he removed to Spokane in this state. From Spokane he migrated to Seattle about nineteen years previous to his death. He made a specialty of insurance law and was regarded as high authority in that branch of practice. He represented a number of old-line companies as their legal adviser. The Pacific Coast Board of Underwriters endeavored to induce him to leave Seattle and settle in San Francisco; which he refused to do, being strongly attached to Seattle. In July of last year he was operated upon for appendicitis, and he never fully recovered his health.

JOB P. LYON.

In Salt Lake City, Utah, on the 11th of March, 1920, Job P. Lyon died. Although he had removed from Seattle to Utah fifteen years

previously, he was so well known in that city, which he served as city attorney in the early '90s, that your committee regards him as entitled to notice among our departed brethren.

GEORGE H. JONES.

At Columbus, Ohio, on March 8, 1920, George H. Jones, for many years a resident of Port Townsend, prominent as an attorney and active in Republican party politics, passed away. He had left Port Townsend several years previously and settled in Columbus. He was a native of Portsmouth, Ohio. He came to Washington in the early '80s as a representative of the United States attorney general's office. After a time he resigned his official position and entered the practice of law in Port Townsend. He was an active and useful member of the Territorial Convention which framed the Constitution of the state. He took continuous interest in politics and public affairs. After his return to Ohio, Mr. Jones became assistant attorney general of that state. He was on terms of intimacy with President McKinley and President Roosevelt. He is survived by his wife and by other relatives living in Columbus, Cincinnati and Portsmouth, Ohio.

JOHN W. ARCTANDER.

On April 30th, 1920, in Seattle, John W. Arctander died. He was born on October 2nd, 1849, in Stockholm, Sweden; his father being a Norwegian and his mother a Swede. His parents moved, shortly after his birth, to Norway, where he lived until his emigration to the United States. He belonged to a family that for a long time had been prominent in Norway, both professionally and politically. He came to the United States at the age of 20 and lived first in Chicago for about two years; then moved to Minneapolis, where he studied law and was admitted to the bar. He practiced in Minneapolis a short time, and removed thence to Willmar, Minnesota, where he practiced for upwards of eight years. While at Willmar he was appointed state district attorney for a jurisdiction comprising several counties. After staying at Willmar for about eight years, he went back to Minneapolis, where he continued practicing his profession until 1909, when he had to leave there on account of impaired health. In the last years of his stay in Minneapolis, he was attorney for the Minneapolis and St. Paul street railway lines. He was recognized as one of the leading attorneys in that city and was well known through the Middle West. In 1909, having contracted diabetes and the doctors advising him that the climate there was

injurious to his health, he left Minneapolis and went to Ketchikan, Alaska, where he practiced for upwards of one year. He came to Seattle in the fall of 1911 and lived there until his death. He is survived by his widow and two grown children.

EDWARD FOGG.

At the Memorial Hospital, in New York City, on May 1st, 1920, after an illness of five months, Edward Fogg died at the age of thirty-nine. He was a son of the late Charles S. Fogg, a prominent practitioner in Tacoma for many years. Edward came to Tacoma with his parents in 1889. He studied law at Harvard and was admitted to the bar in Tacoma. He is survived by his wife and two daughters, as well as other relatives in Tacoma.

ALBERT MOODIE.

On June 12th, 1920, in Seattle, Major Albert Moodie, former assistant United States attorney and a survivor of the World War, was pinned beneath his automobile when it capsized after colliding with another machine, and he received injuries from which he died the next day. He was born at Mount Vernon, Texas, and was thirty-eight years old. He had resided in Seattle for about ten years. At the outbreak of the World War he was commissioned a captain in the Federal service and was assigned to the intelligence section, in which he served throughout the period of conflict in Seattle and in Salt Lake City. He was the head of the Utah Intelligence Service of the Army. He was discharged from the army in December, 1919, and returned to the practice of law. At the time of his death he was a partner in the firm of Huffer & Hayden. He was married and, besides his widow, left two sons, aged, respectively three years and eighteen months.

LOREN H. BREWER.

On July 5, 1920, at Hoquiam, Loren H. Brewer, a native son of Washington, former member of the State legislature and generally prominent in the Southwest, died at the age of fifty-two, after an illness of four months due to a complication of heart trouble and rheumatism. He was born at Grand Mound in Thurston county, Washington, his parents having been among the earliest pioneers in that part of the territory and settling there in the early '50s. He studied law in the office of Judge George Scofield, then of Monte-

sano, and finally located in Hoquiam. Except a year (1900-1901) spent in Alaska, he had, with his family, made Hoquiam his residence. During much of the time he was associated in the law business with F. L. Morgan in the firm of Morgan & Brewer.

Aside from the practice of law Mr. Brewer always took an active interest in politics and public matters. He was a lifelong Republican and for several years an officer, secretary or chairman, of the county organization. He served in the State Legislature in the session of 1903. He announced his candidacy last spring for lieutenant-governor.

At the time of his death he was president of the Hoquiam Rotary Club, of which he was really the father. He was a past president of the old Southwest Washington Development Association, in the work of which he took an active interest during the life of the organization. Mr. Brewer served for two terms as president of the Hoquiam Commercial Club, and always took an active interest and part in its work. He was a past exalted ruler of the Hoquiam Elks lodge, and a member of the Moose and Knights of Pythias. He was an active worker in the First Presbyterian church, and for a number of years sang in the choir.

FREDERICK V. BROWN.

Following an illness of six months, Judge Frederick V. Brown, of Seattle, western general counsel of the Great Northern Railway, died in Victoria, B. C., on July 6, 1920. He was born in Michigan fifty-eight years ago. He came to Seattle in 1908 from Minneapolis, where he had served as judge of the state court for a number of years. He came to replace L. C. Gilman as western general counsel of the Great Northern, upon the promotion of Mr. Gilman to the St. Paul offices of the company. Judge Brown became well known and highly liked in Seattle. He was elected president of the Rainier Club; took an active part in the Seattle Golf and Country Club, the Spokane City Club and the Spokane Country Club. He was an ardent student of literature. A short time before his death he loaned to Judge George Donworth the fac-simile of the "Old Yellow Book," the original of which was found by Robert Browning, the poet, in Florence, Italy, it being a history of a trial in Rome during the middle ages. Mounted on the cover of the book was Browning's famous poem "The Ring and the Book." When Judge Brown loaned the copy, which is one of the few that were published from the original, he told Judge Donworth to present the volume to the Seattle Public Library in case anything happened to him before the book was returned. During the great war Judge Brown became identified with the King County Council of Defense and took an active part in its work. He is survived by his wife, a son and a daughter.

W. SINKS FERGUSON.

In Seattle, on July 15, 1920, W. Sinks Ferguson, a resident of that city for twenty years, died at the age of sixty years. Of late years he had virtually retired from law practice. He was born in Indiana on October 13th, 1859.

JAMES M. EPLER.

In Seattle, on July 16, 1920, at the age of eighty-three years, James M. Epler died. He was born in Cass county, Illinois; graduated in law from the Illinois College at Jacksonville, and practiced there for twenty years; was twice a member of the Illinois legislature in the '60s, serving both as representative and as state senator. In the middle '60s he made the overland trip to California and went from San Francisco by water to the Isthmus of Panama, across the Isthmus on horseback, by water to New York, and back to Jacksonville. April 17, 1867, he was married to Miss Hannah Taylor. With his entire family he made his first trip to Seattle in 1883, traveling overland to San Francisco and coming up the coast by ship. He came West again in 1884 when he removed to San Francisco. He took an active part in politics and stumped California for Grover Cleveland in that year. In 1887 he moved with his family to Chehalis in this state, and two years later moved to Seattle. Until the death of Mrs. Epler, ten years ago, he was active in the practice of law. He is survived by a son and a daughter.

Respectfully submitted,

JOHN ARTHUR,

Chairman of the Committee.

THE DIRECT PRIMARY

Jess B. Hawley, Boise, Idaho.

The lawyer of modern day and tendencies is not so concerned with purely political and governmental laws and discussions as was the lawyer of another generation. The profession comes perilously near being a mere business in many men's minds and the study of legal problems and laws without reward or compensation, merely to thereby render a service to the general public is not as popular as in days gone by.

The duty of the lawyer to give his very best talent in analyzing political conditions and intensely studying governmental curealls and radical reforms and departures from tried and workable systems of government is a duty which the lawyer owes to the "honor of his profession." One who cannot give some of his mental energy and acumen to that type of service is not appreciative of the government which gives him his chance to be too busy to attend it.

With individualism gone rampant there is a real need for trained minds to analyze and dissect the new political thoughts presented to the public, sometimes by earnest thinkers—sometimes by conscientious half thinkers—often times by enthusiastic rattle brains and wide eyed dreamers—quite frequently by cunning crowd psychologists and calculating crooks.

The urge of duty—the sentiment of gratitude—the pride of professional citizenship—all unite to drag the capable business-crowded lawyer from the lucratve phases of his professional work to the consideration of higher, though non-lucrative service.

This introduction contains the germ at least of the idea which caused the selection of a subject so barren of pecuniary profit and return.

I cannot do justice to the great question presented by a consideration of primary reform without tracing the trend of American politics that has brought the problems to us in these days.

Few public men have failed at one time or other to observe publicly that the "American government is a government of political parties." Lately many wonder if that statement will continue true. In the demand for a direct vote in the nomination of candidates is involved the unsettling, at least, of party power and importance. How quite entwined in and around the growth of our government is the quasi official party system no well informed man can question, and if the direct primary law is to kill or dwarf ths twin of constituted government, what blighting or disastrous effect will follow?

Parties are the result of the English right of association and as-

semblage. The English brought with them to this country the habit and practice of association of persons counselling together to further what things might be of common benefit.

The great resolutions of our people to form a separate nation and free themselves from England's oppressive government, were made in common assemblages in town and township meetings in New England and county organizations in the colonies along the middle and southern seaboard.

De Tocqüeville, writing of his study of American Democracy in 1831, said: "The right of association was imported from England and it has always existed in America so that the exercise of this privilege is now associated with the manners and customs of the people." Writing with the life of the United States so short that many men lived who knew personally of and had participated in its entire political existence, he was impressed with the two schools of political thought that had gathered around them many adherents and had resulted in the formation of parties, one tending toward democracy and the accentuation of individual rights, the other favoring a representative form of government and tending toward the centralization of power and the exaltation of the State. He dwelt upon parties as accepted quasi governmental institutions, galvanizing into activity the inert American government and quite happily and unanimously accepted, even at that early date, as firmly established institutions of government. One of his comments on this is "In the United States, as soon as a party becomes preponderant, public authority is placed under its control, its private supporters occupy all of the places and have all of the forces of the administration at their disposal." He might well have written this today. P. Orman Ray, in his "Political Parties," has to say:

"Political parties exist under all forms of popular government. Wherever the people are endeavoring to govern themselves, they divide according to their views on public measures, and out of these differences of opinion politcal parties arise. 'Those of the same opinion associate with others like-minded, and the existence of political parties thus becomes the outgrowth of free speech and a free government.' Political parties are in some degree an index of the political capacity and genius of a nation. Wherever an active life of the people and of the state has been developed, political parties have sprung into existence. The most gifted and freest nations politically are those that have the most sharply defined parties. Nothing is greater proof of American political capacity than the organization of two competing parties to manage a government strikingly well adapted to the party regime. Wherever political parties are nonexistent, one finds either a passive indifference to all public concerns, born of ignorance and incapacity, or else one finds the presence of a tyrannical and despotic form of government, suppressing the common manifestations of opinion and aspiration on the part of the people. Organized, drilled, and disciplined parties are the only means we have yet discovered by which to secure responsible government, and thus to execute the will of the poeple. Little glory will therefore

accrue to the statesman who stands aloof from party, and condemnation should be meted out to that numerous class of citizens who, for one reason or another, or for no reason at all, neglect to take an active part or to feel a deep interest in party politics.

"Political parties, while responsible for much evil, are powerful forces for good in a democracy. They educate and organize public opinion by keeping the people fully informed in regard to public matters; by discussing, freely and thoroughly, every public question in the presence of the people; by discussing these questions in the light of great principles of government; and by securing not only discussion before the people but discussion by the people. In the United States parties have become so indispensable that we cannot conceive of the possibility of getting along without them. They have breathed the breath of life into the inert governmental organism created in 1787. They have furnished both the motive power and the lubricant for the continuous and successful operation of the governmental machine which the Constitution merely describes. 'It is easier to imagine the demolition of any part of our constitutional organization, the submersion of a large part of what the Constitution describes, than to imagine our getting on without political combinations; they are our vital institutions; they abide in the innermost spirit of the people.' Indeed, the most complete revolution in our political system has not been brought about by amendments or by statutes, but by the customs of political parties in operating the machinery of the government.

"Yet vital as political parties are to the successful working of our system of government, they have grown up to maturity and power much as the English cabinet has developed—as extra-legal institutions wholly unknown to or ignored by the law. Only within the past few years have statutes distinctly recognized the existence of parties, and attempted to regulate their activities. Such enactments constitute a tardy acceptance of the fact that parties and party mechanism have become institutions which perform very important functions in the conduct of government, and are therefore to be taken seriously and regarded as worthy of careful study. The problem of self-government now is the problem of controlling these institutions which, in fact, manage the government."

James A. Woodburn, in his "Political Parties and Problems," says:

"Ours is a government by party. The actual forces that operate the government are party forces. In all forms of popular government, wherever men are striving to govern themselves and to realize government by the people, political parties exist. People divide according to their views on public measures. The only way we have yet found to carry on free government is by organized, drilled and disciplined parties. 'In America,' says Bryce, 'the government goes for less than in Europe, the parties count for more. The great moving forces are the parties.'"

How did these "strange bodies unknown to the law" function and govern? It is of concern here mostly to note those matters connected with the control of the party organization. It is very interesting that in the early days of the republic men did not secure nominations for office as they do now. Candidates for office were presented to the people on their own announcement or introduced at mass meetings or informal caucuses of interested persons. Aspirants for state office were generally named by a legislative caucus composed

of the members of the party in the legislative body. Later this caucus was added to by the selection by outside leaders and representatives of the party and was called a mongrel caucus. Candidates for president were named by a congressional caucus. It needs no deep student of government to realize that this form of selection was not truly representative but it endured for a long time. In fact, the legislative and congressional caucus was not overthrown until Andrew Jackson's time. By 1840 the system of delegate conventions had been quite generally adopted and entered upon its trial. Before the Constitutional convention in 1787 there was a caucus in Massachusetts of the people from the different colonies to put forward candidates for office. In New York clubs sprang up. Presently, as the democratic spirit grew and the people would no longer acquiesce in the rule of the high chiefs and the legislature, began to be recognized as the party to make nominations for the Federal and state offices, and parties in Congress nominated the candidates to be run for the presidency, and the state legislature nominated the candidates for governor and often for other offices.

This form lasted through the early decades of the nineteenth century but different principles concentrated the people into different parties and brought to each voter the idea of his equality with others and his right to participate in the selection of candidates and the adoption of a party platform. This party regime grew and ripened in the Democratic party about the year 1825 and as to the Whigs some years later and when the Republican party sprang into being it adopted the system in all of its essential features. The theory of public sovereignty requires that the ruling majority must name its own standard bearer or candidate. As Bryce, in his "American Commonwealth," says: "It is strictly representative throughout, it is not merely a contrivance for party intrigue or to prevent dissent but is the essential feature of a matured democracy."

The party system, therefore, has developed naturally under our Constitution though it was not made a matter of special consideration at the time of its adoption. The party was at its origin a system of voluntary association pure and simple, but as its functions grew it developed into a public concern, as one authority states: "The nomination and election of candidates for office under political parties has become so important in determining the measuring and administering of the affairs of government that it is by some authorities regarded that the representative form is not so much the essential question in the representative form of government as the regulation of party action and the naming of candidates becomes particularly important when the whole ballot is adopted for the right to choose candidates for public office whose names will be placed on the public ballot is as valuable as the right to vote for them after they are chosen."

I have dwelt so much upon the party system because in my judgment the effect of the direct primary upon that system is one of the most important considerations. Subsequently, I will conclude that the direct primary is destructive of party discipline, party influence and party existence. It will be apparent that he who studies this question to a conclusion must make up his mind whether the adoption of a comprehensive direct primary is preferable to the practical destruction of the party system.

The Nemesis of a democracy is the unwillingness of man to permit fair and free action by his fellowman in the expression of his choice of principles and officials. That tendency early began to assert itself in wrong and fraud in selecting caucus and convention delegates. There were few laws protecting the integrity of the ballot prior to the adoption of the secret Australian ballot, and fewer yet directed against fraud in the primary election of various types in which party delegates were selected. Of course, it goes without elaboration in saying that fraud and oppression of every character found expression in the conventions themselves. It was doubted by some that the parties, because they were not recognized by the Constitution of the United States and of the various States, could be recognized and protected by law. Merriam, who has written probably the foremost book on primaries, recounted early conditions before the primary system for the selection of delegates came into existence:

"Party primaries were invaded and controlled by men of a different or of no political persuasion, and from other districts of the city. Sometimes this was done peaceably and with a show of decency and order; or again it was accompanied by violence and disorder of the most outrageous character. Both sneaks and sluggers were employed as occasion dictated. Again, the test for participation in party councils might be made too stringent as to exclude many bona fide voters of the party, and thus leave the control in the hands of a group managing the machinery as was done in Tammany Hall. Bribery of voters in an election although subject to severe penalties under the law did not constitute an offense in a primary or caucus and was not punishable. Voters might be bought and sold with no pretense of concealment, for there was no remedy or penalty at law."

Ballot boxes were stuffed, the count of votes falsified and a hundred ingenious devices were employed to the end that finally the American people became thoroughly disgusted with the free and untrammeled right of the party to conduct primaries and statutory regulations were introduced to overcome the weakness of the old caucus or convention system. One fact stands out very clearly in American history and that is that the people do not remain wrong long after they realize that they are wrong and so State after State felt the demand of its citizens for protecting the very important matter of party control. New York and California, in 1866, made the matter of primary conventions a concern of the people by statu-

tory regulation thereof. To the credit of California is the first act, March 26, 1866. New York followed in April 24, 1866. The impelling cause of the enactment of the California act was the struggle between what were called the "Long hair" and the "Short hair" factions of the Union party. The disputes between these factions were accompanied with scenes of great violence, disorder, fraud. Sluggers and gun men worked joyously, though violently, for each side. The California act was only an optional law and gave the protection of the statute to the party invoking it. The New York act went a step further and was mandatory in character. In 1871, Ohio and Pennsylvania followed the lead of New York and California.

In 1875, Missouri passed a law similar to the California law. In 1874, California revised its law and threw the protection of the general election system around the party primaries. These provisions covered the use of certain forms for poll lists, the challenging of voters, and the canvass of votes. Nevada, in 1873, made bribery in caucus or convention a felony. In 1878, New Jersey prohibited the participation in primaries of other than legally qualified voters. In 1878, Indiana forbade the sale of liquor on primary election day. Up until 1880 primary legislation had made but little progress except in the state of California and there it was optional. The Ohio and New York laws were optional. The New York and New Jersey acts were intended merely to prevent illegal voting. Then followed the Colorado law of 1887. This law was an improvement over the others in that it enumerated eight different classes of fraud against primary elections. By 1890 one-half of the States had primary legislation. Delaware, Maryland, Nevada, as well as South Carolina, had mandatory laws governing the procedure in primaries in detail, although all of these, with the exception of Nevada and South Carolina, were local in their application. We find that by 1899 there had been a very great tendency on the part of primary law legislation to approach toward mandatory laws. California and New York led in this. Massachusetts first adopted the Australia ballot for primaries. Another step forward was the passage of laws requiring the expense of the party primaries to be borne out of public funds. The first law of this kind was adopted by Missouri in 1891, Maryland in 1892, Kentucky in 1892 and Mississippi in 1892. Now this, in one sense, was unfair to the partisan and the independent since it required them to contribute toward the expense of nominations in which they were not directly concerned, still as one authority states:

"The controlling purpose of primary reform was, however, the improvement of political conditions in the interest of the whole community, and on this broad ground the propriety of the payment for party primaries by public funds rested.

"Another important feature of the primary legislation of this period was the development of a definite test of party allegiance."

West Virginia in 1891, Wisconsin in 1893 and later Minnesota and

Michigan required that one voting must, if required, declare himself to be in sympathy with a definite party and agree to support it. By 1900 two-thirds of the States had enacted primary laws, but none had up to that time passed a mandatory act placing the primary on the same plane as the election.

In 1908, as a result of forty years movement toward legal regulation of party primaries, every State in the Union had legislated against the abuses arising under the voluntary party system of nomination. Only in Colorado and Montana had certain advanced laws been repealed, but, generally speaking, no state took a backward step in primary regulation. But still the people were not content.

"The regulation of the convention system, however thoroughgoing and complete in its provisions, was unable to meet the demand for popular control of the party system. Despite the fact that in many cases the primary had been surrounded by practically all of the safeguards of an ordinary election, the public remained unsatisfied."

The period from 1900 to 1908 was one in which the direct primary law incubated. In 1901 Florida, Oregon and Minnesota enacted important primary laws; in 1902 Mississippi, 1903 Wisconsin, 1904 Oregon and Alabama, in 1905 Illinois, Michigan and Montana, South Dakota and Texas, in 1906 Louisiana and Pennsylvania, 1907 Iowa, Nebraska, Missouri, North Dakota, South Dakota and Washington, and 1908 Illinois, Kansas and Oklahoma and Ohio followed, and 1909 Idaho was added to the list. The various laws differ in their forms but I will attempt no analysis except an analysis of the Idaho law as it obviously is impossible to go into this detail here. However, the Idaho law is typical and contains most of the common features.

A definition of the primary law is now in order. I give three. By the Supreme Court of Minnesota:

"The words 'primary election,' we may say, are well understood to mean the act of choosing candidates of the respective political parties to fill the various offices."

The Supreme Court of Idaho gives what is probably the popular conception of it in these words:

"A primary election law is merely a substitute for a convention, and the only thing accomplished by it is that of selecting candidates for the several parties whose names shall go on the official ballot for the general election."

Here is another view:

"The primary is the initial step in the system looking to the nomination of candidates whose names are to find a place on the official ballot."

Idaho has gone through all of the stages of development from caucus to direct primary system and whether progressive or retrogressive, has abandoned its direct law; repealed it in 1918 after ten years of trial.

In 1903 the state of Idaho interested itself in a primary law, under

which each political party had the right to hold primary election for the purpose of electing delegates to political convention. The provisions for election followed largely the provisions of the general election law and regular election officers were provided but the expense of the primary was borne by the party. Only qualified voters were entitled to vote and it was made unlawful, a misdemeanor, for any person not affiliated at the last general election with a party to vote at its primaries.

This law was effective until 1909 when a direct primary law was passed which was mandatory. Political parties were defined by it as those casting at least ten per cent of the previous general election vote. One who desired to become a candidate for office was required to file nomination papers or have them filed in his behalf. No other statement was necessary than that the nominee "represented the principles of the party." A nominating fee was required of $2.00 on a salary of $300.00 or less per annum. When it was over that sum an additional sum equivalent to one per cent of the excess was charged. The nomination might also be had by petition as well as by filing nomination papers. Provision was made for the organization of electors at a convention providing that convention was held upon the same day as the primary. It was made the duty of the secretary of state to transmit to each county auditor a certified list of the district nominees, and the county auditor was required to mail notice of the names and addresses of all persons for candidates for office. The county auditor was required to have printed a separate primary ballot for each party and when an elector went to the polls he was given a ballot of each party but he was only permitted to vote one ticket and the others were destroyed by the judges. No person was qualified to vote unless he was a qualified elector and was duly registered in his precinct. All expenses of ballots and other supplies were paid out of the county treasury. The provisions of the general election relative to the holding of elections, appointing of judges, officers and duties, counting of ballots and making returns, and canvassing were all made the same in so far as they were applicable as the provisions under the general law. An interesting anachronism is presented by the statute that "no person shall sell any intoxicating liquor on the day on which the primary is held." There was also in connection with the Idaho statute a corrupt practice bribery act which made it unlawful for the candidate to spend any money except for personal expenses and these were defined under the statute itself as including only the expenses actually incurred and paid by the candidate for traveling and expenses incident to traveling and for writing, printing and preparing for transmission any letters, circulars or other papers not issued at regular intervals, whereby he states his views and position upon public questions, and for the necessary expense of hiring halls. No candidate could spend more

than twenty-five per cent of the yearly salary attached to his office. The law further provided that within 20 days after the holding of the primary each candidate must file an itemized statement, under oath, setting forth all moneys paid by him, for him or promised by him or anyone for him with his knowledge or acquiescence for the purpose of securing or influencing or in anyway affecting his nomination. This statute was framed to require every possible item of expense to be made public.

Under the law the nominees of the party selected a county central committee and this body had the right to make a platform at its platform convention for the county. It was also its duty to select a state central committeeman and the delegates to the state platform convention. The law provided for a first and second choice and made it compulsory for the voter to vote for a first and second choice. If no one received the majority of the first votes then the second and first choice were added together and the one who received the highest number of votes of both first and second choice was declared the nominee. It was the duty of the board of county commissioners to canvass the votes for the state offices which were then submitted to the state board of canvassers who then canvassed the votes for congress, state and district offices. There was also at that time a preferential United States senatorial primary. It was the duty of the secretary of state to certify to the legislature the names of the candidates receiving the majority of votes for United States Senate. Registration of voters was also provided for. It will be seen that under this law there was nothing to prevent the Republican voting a Democratic ballot, or vice versa. Names of candidates were printed in alphabetical order.

The law was amended the next session of the legislature, 1911, and primaries were held one month earlier in July instead of August. The provision for an alphabetical arrangement of the names was also changed and an elaborate system devised for rotation of names on the ballot and making it optional to vote a second choice. The law was also amended to allow increased personal expenditures to 25 per cent of the yearly salary for state offices, 15 per cent for district offices and 10 per cent for county offices, $100.00 for county commissioners and legislators, also an extension of time for filing statement of expenses. It made it necessary that the county auditor send a notice to candidates to file their expense accounts before the criminal statute was applied to them. It provided the "person receiving the highest number and not less than forty per cent of the first choice shall be elected." Then in case this is not sufficient second choice will be added. In 1913, the legislature took another try at the law and changed it so that it eliminated nomination by petition and the necessity for filing an acceptance, also permitted the voting for first and second choice if there were more than two can-

didates. The most important change was the requirement that one must specify the party ballot he desired and could not take all the party ballots and secretly vote his choice. It also was changed so that the voter could write in the name of the member of the county central committee for his precinct, thus electing a party organization by primary. The elector could be challenged on the ground that he was not a member of the political party for whose ballot he asked and was required to swear that "he was affiliated with such party at the last general election and that he intended in good faith to support its candidates generally." If he did not take this oath he was not allowed to vote at the primary. Anyone taking part in a primary could not nominate or be nominated by petition.

MERITS OF THE PRIMARY LAW.

Prior to the adoption of the direct primary system in Idaho there had been agitation and argument and the splendid theories of the primary law as well as the abuses of the convention system had been quite thoroughly discussed and primary law was by its enthusiastic advocates promised as a system under which the party voter would be in full control of the party candidates; that vested interest and wrong influence could not possibly corrupt the electorate and the importance of the individual voter in the selection of good men would become so clear and plain that the law would result in increased interest in government by every citizen and the purification of politics. Our primary law was not only a well planned law as first introduced, but as its wrongs and shortcomings became apparent amendments were made at each session of the legislature looking toward the improvement of the law, making the law workable. In fact, the direct primary law was thoroughly tested. Our people favored it and wanted it to work out right and they did the best they could to fairly test this law under the best conditions. A history, therefore, of primary activities in Idaho is of interest in testing the variance between allegation and proof.

From the beginning there was dissatisfaction with the primary law among the older leaders of both political parties. The habit of convention systems had become fixed and the new order rather took away the power and prestige of these leaders.

The first election in Idaho showed plainly that while the candidates for the leading contested offices were known to the voters and as a rule each could make an intelligent selection and choice, still the candidates for the minor state offices and for most of the county offices were unknown to the voter, and while he could intelligently and correctly, according to his lights, vote for presidential electors, United States senator and congressman and governor, he did not know and therefore could not very intelligently and clearly express his choice for the minor state offices and most of the county offices.

Herein lies the real objection to a form of direct primary in which the people are obliged to vote at once for a very few candidates representing real principles of government and a great many candidates for offices involving in their administration no principle. Why a Republican should make a better auditor or a Democrat a better tax collector or peace officer or coroner is difficult of intelligent explanation, or why candidates for office representing no principle should be selected directly by the voters who do not and cannot know the candidates or their fitness for purely ministerial or business functions is equally obscure. The defect just mentioned can, it has been suggested, be cured by a short form of ballot limiting the offices to be filled to those representing or carrying out principles of government and leaving the merely minor or clerical offices to be filled by executives or chosen by a representative convention with opportunities and facilities for investigating the qualifications of the candidates.

In Idaho at the first direct primary election it was clearly demonstrated that the voter often votes for the first name on the ticket. Names being arranged alphabetically, the candidate whose name began with "A," "B" or "C" secured many votes simply and solely because of that fact. So flagrant and widespread was this abuse by the voter of his privilege that the law was amended to prevent a fixed alphabetical order and a change was made so as to put each candidate's name first on an equal number of ballots. One thing which the direct primary has brought about in Idaho, and from all authorities available to me as to the effect in other states has also brought out in those states, is a much larger vote at the direct primary than was formerly had in the selection of candidates by party convention. This is a very desirable thing and is the best argument for a justification of a direct primary for if the people generally can be brought out to vote at the selection of party candidates their interest in government and politics will find reflection in better men and measures, and as a rule they will select the men they consider best fitted for the contested major offices. I have available the number of votes at the primary election of 1914 in Idaho. There was a contest in each of the five parties represented at the election for office of governor and there were cast 55,800 votes. At the general election following there were cast 129,216 votes, or at the direct primary there was forty-five and five-tenths per cent of the votes cast at the general election. At other elections in Idaho the per cent was as low as twenty-five per cent, but in those same years I do not doubt a convention system would have called out far less voters. There have been earnest criticisms of the blind punch board method of voting fostered by a direct primary for every office.

L. J. Abbott, in 1911, wrote of it:

"Having determined the kind of a primary to be adopted the next

question to be considered, and by all odds the first in importance, is the number of candidates to be subject to the primary law. This is the chief defect of every primary enactment with which I am familiar. To illustrate: In the Oklahoma primary election of August 2, 1910, the Democrats were compelled to make choice among ninety-five candidates who were aspiring for no less than thirty-seven offices. The republicans had eighty-nine candidates seeking thrty-eight offices.

"Out of this grand hodgepodge of good, bad and indifferent, how could the elector make any intelligent choice? He was assailed with countless letters, handbills, printed speeches, newspaper articles and public addresses. In the hurlyburly of the primary it was all but impossible to get the truth regarding any aspirant for office one did not know personally.

"One attending a 'candidates' barbecue' just previously to the primary cannot but be nauseated by the fulsome praise candidate after candidate gives himself. A man of keen sensibilities revolts at the unseemly scramble, at the self-laudation and the tacking up of his half-tone picture at every cross-roads, like advertisements for patent nostrums. Men of high ideals will not enter such a race, and the field is left clear to the calloused and the demagogue. The man who wins is the handshaker, the 'jollier' and the fellow with the Sunny Jim smile.

"Now this is not true of the men at the head of the ticket. In Oklahoma a blind man, not burdened with wealth, defeated a millionaire banker for the United States Senate merely because the people understood the issue and wanted the blind man to represent them. There are five or six offices that every elector is interested in. For these, men are put forward and nominated that the people really want. But a large number of very important administrative offices are almost totally overlooked. It is true sometimes, for a particular reason, that some minor contest is brought prominently to the front, and then most of the voters will inform themselves regarding the merits of the respective candidates for this office, but this is the exception, not the rule.

"I can vouch that I have heard a hundred men of intelligence ask, just previously to voting, regarding the qualifications of certain candidates for offices of highest importance. Quite as frequently the answer was, 'I don't know any of them, I just voted for the first fellow on the list.' And the first fellow on the list got the nomination. This very year Hon. L. T. Burnes, regarding as hopeless his candidacy for state commissioner of insurance of Oklahoma, gave up the canvass, withdrew his name, and went off to Central America. But the ticket had been certified up to the printer, his name went on the ballot, and beginning with "B" it happened to come first in the list. So in spite of the fact that Mr. Burnes was no longer a candidate and had left the country, he was nominated by a handsome majority.

"This same fall Wisconsin outdid even this. In that state a candidate for attorney general was nominated who was dead. The Oklahoma aspirant for civic honors was finally located and brought back to run his race. Wisconsin could resort to no such expedient.

"The remedy is not difficult to suggest: Nominate but a few of the most important officials. Let the executive appoint his executive helpers. Then hold this executive to a strict accountability for his appointees."

Emily Blair said in Outlook, 1911:

"I think it is ruination to man's self-respect to run for an office that does not involve a principle. There isn't a candidate running

that hasn't a Uriah Heep manner that turns my stomach. I've more respect for a downright thief any day than a beggar, and what's the difference between begging for an office and for money?

"There you have the voter's attitude. He resents the attack on the privacy of his opinion; he resents having to be rude or tell a lie; but he will tell a lie if he has to. An old lady of my acquaintance used to say: 'When people ask me an impertinent question, I say, 'I don't know.' It is either say that or 'None of your business,' and I prefer to lie rather than be rude. I'd rather be damned hereafter than now.'"

In Idaho the people selected as state treasurer a man who could not have been a nominee under the party convention system. While there was no one interested enough to tell his shortcomings to the people, there were fellow officers who knew or suspected enough about his questionable actions to have defeated him in convention as there would have been an opporunity to have seen practically all of the delegates and an idea of this man's character thus given to the convention. This particular candidate served four years as state treasurer and immediately thereafter served five years in the state penitentiary for sealing $145,000.00 of state funds.

The cost of the primary and then the election made it difficult for a poor man to run for office. Large sums of money were expended by candidates and their friends in an attempt to secure nominations. The fact developed after the first primary election, on account of the vast amounts that were expended by candidates for governor on the respective tickets that a poor man could not afford to announce himself as a candidate for that high office. Large amounts of money were necessary to be expended by all of the candidates when one particular candidate indulged in such practice. It is a conceded fact that two of the rival candidates in that campaign for office of governor each expended many times as much money as the salary of that office. A corrupt practice act is of some deterrent effect in this primary law of Idaho but it is our experience that no man can make the primary campaign for any of the leading offices of Idaho and keep within the expenditures allowed by law. Even if he does and is elected he has the election expenses to meet. A poor man without wealthy influence back of him is under a great handicap in a state of such great distances and so many diverse interests as Idaho. I find no authority who does not admit this to be an evil of the primary system. Even its admirer and supporter Merriam says:

"It is generally conceded that the cost of campaigning where the candidate is chosen by direct vote is greater than under the other system."

Can this statement be passed over lightly? The men who were most favorable to the direct primary in Idaho thought that through its influence the effect of great wealth would be minimized and yet we have here a law which makes it practically impossible for a poor man to run for a high office. He is obliged to finance himself. He

has no party organization backing him and he must visit every one of the counties in the state and attempt to form some sort of an organization to get his friends to vote for him at the primary. Of course, if the man is already widely known, as a man of Roosevelt's type or a man of Borah's type, it will not cost him much to make a primary campaign, but, take a man not so widely known and without the prestige of a Roosevelt or a Borah—he simply cannot compete with such popular men without much publicity and that costs money to get. The man who goes into a state office under a heavy debt is not best suited to administer the affairs of the people yet a poor man has no alternative. The direct primary for high state offices is costly and tends to favor rich men.

One might find in the apparent safety of the great leaders of the day their reason for favoring the direct primary. It is asking too much of human nature to expect that these leaders who now are widely known and have great personal followings to point out an easy way for another man to rise up as a leader before the people.

We found by our experiences in Idaho that the tendency grew less and less for the office to seek the man. Under the primary system men pushed forward for office who never would have had a chance had they been obliged to go before a critical convention seeking, as conventions generally do seek, to put into the field the strongest available candidate.

The man who wants and bids for one of the minor offices is one generally not very capable of filling it. It cannot take much argument to demonstrate that the good man cannot afford to give his time to getting a minor office, and has not interest enough to enter a contest but under the convention system such a man can be drafted into service. The race for the minor offices in Idaho under the primary system, except for the higher offices, was a general scramble of the unfit. I have been from one end of Idaho to the other and that is a long distance in this state and the general statement I obtained was "We can't get good men to enter the race for the nomination." Naturally, why does a man who really serves for services' sake want to scramble for a nomination with some fellow who has nominated himself and who enters into a bitter campaign of personalities and invectives to belittle the man opposing him? Men who would regard a call from a party convention as an honor, even to become a candidate for a minor office, state or county, would regard with abhorrence their own entry uninvited and unsolicited into the race for the same office. I will not say that the direct primary resulted in inferior men being elected to office in Idaho. I will only go so far as to state that the whole attitude of the public toward office seeking changed and that it was becoming more difficult to interest men in politics, except the professional politician who lived by politics, the one who was benefitted by it and I assure you the

adoption of the primary system has not eliminated this type. I venture to say that there was more money spent in the interest of the individual candidate, generally spent in a way that caused bitterness and engendered hatred, than was ever spent under the party convention system.

Another reason for the disappointment of Idaho with the direct primary was the effect on the party organization and loyalty. I think that I have shown that parties are and always have been essential parts of our government system. To weaken and destroy a great party is a serious thing. To weaken and destroy a political party cannot but bring disorder.

Under our system of government, parties are necessary. I cannot conceive how our system can be maintained unless there are at least two political parties in existence. The fact that these parties strenuously oppose each other and the candidates make vigorous contests for election is a guarantee for the future instead of a menace. A certain loyalty to party principles and party candidates is in my judgment desirable. It is not only the desirability of the men for office but the principles such men represent that becomes important in elections. Party organizations imply party discipline. The management of the political campaigns and the choosing of candidates subjects the candidates of a particular party to a great extent to the desires and wishes of the committee in charge of the party interests. Under the primary law the candidates for nomination conducted their own campaigns. They were independent of the party authority. Each candidate was a law unto himself so far as the primary election law was concerned. Necessarily, under the primary election law, if such candidate was nominated he was to a very great extent independent. The governing committee of his party had no jurisdiction over him. There were no punishments that could be inflicted upon him. The candidate was absolutely independent of his party affiliations. As a result party discipline was destroyed to a great extent. The individual was placed far above the party and the party organization became weakened and its very existence was imperiled.

The direct primary in Idaho tended to destroy the guarantee of party responsibility put by the party upon its candidates and substituted nothing in its place. If the direct primary had continued much longer in Idaho we would have had very little party interest and each candidate would have been his own party and made his own platform to suit the needs of the election.

The last straw in Idaho and the thing which caused an overwhelming sentiment to arise against the primary was the rise to influence of a class organization, the Nonpartisan League. This was and is a political party created and largely dominated and influenced by a socialist of North Dakota, a politician of great organizing ability and a storm center of dissension, bitterness, distrust and class hatred.

It sought to and was successful in enrolling the farmers as a class proposed to take the state government and run it in the special interest of the farming class. It was an imported organization with a preacher and a newspaper man, not farmers, directly operating it in Idaho. The organizers were very clever men and knew the fine art of political organization with all of its chicanery, fraud and double dealing. They played upon the genuine grievances of the farmer and turned them to good account in getting members and without much publicity got the support of the Socialists, whose organization disappeared as no longer separately necessary. Hundreds of the best of Idaho's farmers and citizens joined the party and it was in the 1918 election a very powerful factor. They held a convention on July 3rd and 4th, and selected certain men as candidates for the various state offices but did not formally effect a party organization. Instead, its leaders advised the rank and file to go into the Democratic primary and vote as Democrats and nominate on the Democratic ticket the men who had been selected at the July convention. This plan was not new to this organization as it has been successfully operated in North Dakota and the Republican party was made the victim. The control of the Republican party and the Republican organization was taken away by men unfriendly to the party and not in sympathy with its interests. The result has been that the Democrats of North Dakota have gone with the Republicans in an attempt to wrest control of the primary election from the Nonpartisan League. As the information is given to me at the present time, so large have been the deflections from the Democratic ranks for the single purpose of assisting the Republicans in regaining control of their party that the Democratic party did not cast sufficient votes to entitle it to go on the official ballot as a party organization. There was in force as part of the Idaho primary a strong party affiliation law and criminal prosecution could follow the taking of a false oath as to party membership, but the Democratic leaders knew it was impossible despite this law to prevent the farmers voting if they made up their minds to do so and they despaired of being able to prevent the theft of their party. They appealed to the Supreme Court of the state to prevent the filing of the nominations of the candidates selected by the Nonpartisan League.

This matter found its way to the courts and our Supreme Court in Donovan vs. Dougherty, 174 Pac. 701, held that the law of Idaho contained no provision which directly or impliedly forbids that a candidate of one political party can not seek and obtain the nomination of another political party at a primary election, but permitted a candidate to solicit and secure the nomination from one or more political parties at the same time. A writ of injunction was obtaned to restrain the secretary of state from certifying the names of the candidates for the state offices and printing them on the official

ballot of the Democratic party. A companion action was a writ of mandate directing the secretary of state to refrain from certifying the name of Samuels as a candidate for the Democratic nomination for governor. It was alleged that the Nonpartisan party elected delegates, held a convention in Boise on the 3rd and 4th of July at which time it endorsed candidates for United States senator and representatives in Congress and certain other candidates for state offices, and that at said time and place determined that it would not place any ticket in the field but would enlist its members as members of the Democratic party, have its candidates named as candidates seeking the Democratic nomination and direct its members to vote the Democratic primary ballot and to secure control of the Democratic party. Mr. Samuels, candidate for governor, had been until a recent date, chairman of the Republican county central committee of Bonner county and was a member of the Republican platform committee held in June, 1918.

The court said:

"If the conduct of the interveners shall be considered as reprehensible. when measured by current standards of political morals, it must still be conceded that there must be some violation of either the direct or implied requirements of the statute before the court will lay its restraining hand upon them to counteract or remedy the wrong that has been done. The affidavits allege that a conspiracy was entered into, seeking as its object to obtain members of the Nonpartisan League as candidates of the Democratic party when the indivduals, who were to seek such nominations, were not members of that party, and with the further object of obtaining control of its organization. Are these acts or this conduct a violation of the primary election law? We are unable to discover wherein they do so violate any express or implied provision of the law. There is nothing in the statute which says that a member of one political party may not seek and receive a nomination to office from a separate and distinct political organization.

"It will be seen that membership of a political party is not only not a necessary qualification to become its candidate for office, but that the means for procuring such a nomination by one not such a member, have been provided by law. If it is not desired that a candidate may procure himself to be nominated by a political party, the principles and doctrines of which he antagonizes and denounces rather than espouses, relief must be had from the legislature, not from the courts."

Thus was the way paved by judicial decree for the easy moving of the party burglars' van.

Thus was the direct primary, which had no expressed or lawful object or purpose other than the best possible securing of the full right of the party voter to fairly, equally and easily vote his choice for the nominees of his party, changed into a convenient and powerful weapon to destroy the party and the voter's right to express his party preferences.

Thus was a party primary destroyed.

One of the very remarkable pronouncements of the present political campaign in Idaho proceeded from the Nonpartisan League several days ago. This organization demanded a return to the direct primary system on the grounds of purity in politics. Think of the astounding, in fact, awe inspiring nerve of this organization in asking that the direct primary, the instrumentality which this organization so successfully used in depriving the Democrats of the right to express party preference at a purely Democratic primary, be reenacted so that it could again make a similar attack upon the Republican voter. Nothing can more emphasize therefore the destructive influences and tendencies of the direct primary upon party organization and the individual voter's right to align himself with others of similar party principles than the action of the Nonpartisan League in its campagn of dishonor and fraud, and my point is more than emphasized by the demand of this very organization, posing as the champion of good and pure government, for a reinstatement of the direct primary under which was committed a great and irreparable wrong against good government.

After this Supreme Court decision was rendered the Nonpartisan League heralded far and wide the fact that the Supreme Court had upheld the rights of the Nonpartisan League and that organization swarmed the voting booths at the primaries of the Democratic party and nominated the Nonpartisan League ticket.

It was at first quite a joke for us Republicans to laugh about the Democratic bird being thrown out of its abode by the Nonpartisan cuckoo, but the seriousness of the attempt and the direful effects following finally brought to the Republicans the realization that jokes at the expense of the rights of men and their elective franchise are serious and that very likely at the next election the plan would be to take the Republican organization.

The Nonpartisan cuckoo never hatched an egg, however, as the Republicans were practically unanimously successful in the state election, except that both Senator Borah and Senator Nugent with the aid and endorsement of this organization were elected.

The great reform, we believed, would follow the primary system, the complete purification of the method of selecting party candidates never followed in Idaho but instead through the primary law the party system was betrayed and violated.

This misuse of the primary by members of the Nonpartisan League, many of whom are typical of the very best of our citizenship, men who had honestly effected this organization to bring about good government as they conceived it, is a serious blow to the direct primary as an advance measure in the betterment of party government. While the wrong might have been avoided by recognizing the selection at a primary of only bona fide party members as nominees it would not and could not prevent persons other than the party voters voting at

the party primary. This is a practical point and it shows that no matter what may be said in the law itself, the terms of the law can be so ignored as to render them of no protective value. We know that the Democratic primaries were protected against the voting therein of Socialists and Republicans by a law which compelled a challenged man to assert his allegiance to the principles of the party at the primaries of which he was attempting to vote, but the actual application of that law so as to prevent such an invasion, as actually was had in Idaho, was impossible and the Democratic leaders made no attempt because it was impractical to protect the voters at their party primaries against wholesale and overwhelming invasion.

I believe I can summarize the results of the direct primary as follows:

1. We have not gotten better men for office.

2. We weakened the party systems.

3. We have not gotten interest in or genuine choice for the offices, assuming a choice presupposes some knowledge about the candidates. With the possible exception of the office of presidential electors, United States senator and congressman and governor for the state and senator and sheriff for the county, we have not secured the informed vote of the voter in making a choice.

4. We have not lessened the cost of the candidate's campaign nor of elections.

5. We have secured a somewhat larger vote under the direct primary than at the convention primary.

6. We have not purified the method of electing candidates, but on the contrary, as a direct result of the opportunity afforded by the primary law, a great blow was struck at political rights and some honest men in the heat of politics, stooped to act a lie and defraud their fellow citizens of their right to maintain a poltical organization expressive of their views, and stole such party organization .

We in Idaho have learned our lesson which will not have to be learned again, and that is the direct primary cannot be accepted as a substitute for party responsibility. Our present law is an adoption of the primary and convention systems and it might be interesting for you to know its general principles.

The present law defines a political party: "A political party is an affiliation of electors representing a politcal organization under a given name which at the last preceding general election cast for any candidate on their ticket within this state ten per cent or more of the total vote cast for all candidates for such office within the state, and upon which ticket there were at least three nominees for state offices, or an affiliation of electors, equal in number to five per cent of the total number of votes cast at the preceding general election, who shall, at least thirty days before the date of the primary file with

the secretary of state a written notice that they desire recognition as a political party."

Primary elections were changed to the second Tuesday in August, and at this primary county officers, district judges, precinct committeemen and delegates to attend the county convention are to be elected. The county central committee is to be composed by a member from each voting precinct and this body has power to fill vacancies at any primary election, judges, clerks and other officials. The county convention shall be held the third Tuesday in August following the primaries. Its duty is to adopt a county platform, select a delegate to the state convention and also a member of the state central committee. This body has the power to make rules and regulations, fill vacancies, nominate candidates for special elections, call state conventions and perform all other acts and functions inherent in such organizations or arising from necessty and not inconsistent with the act.

It is the right of the state convention to elect delegates to the national convention. The state convention is composed of delegates from the several counties; one delegate for four hundred votes cast by that party at the last preceding general election. State conventions shall be held on the fourth Tuesday of August and its function is to adopt a platform and nominate candidates for United States senator, presidential electors, congressmen and state elective offices. The provisions of the general election law relative to the holding of elections, furnishing of ballot boxes and supplies, solicitation of voters, manner of conducting elections, counting of ballots and making of returns and canvassing shall apply as far as applicable and consistent with the provisions of the act and the rules and regulations of the state central committee tending to the prevention of the voting of other than bona fide members of the party. A provision is made that if there is irregularity or fraud on the part of the voter or officers or any other person which results in the election of delegates "who do not correctly represent the principles of the party to which they are accredited or which the convention to which they are elected is clearly satisfied would not have been elected had the primary been fairly and honestly conducted, the convention must deny any delegate so fraudulently elected a seat in the convention, said convention to be the sole judge of the conduct of said primary." This provision is applicable to both county and state conventions. It is the duty, under the law, of the county central committee to designate judges and clerks, and provide separate polling places for each precinct and the cost thereof shall not be paid by the county or state. Notice of such elections shall be had by two weeks' published notice and ten days' notice posted in each precinct and no person shall be allowed to vote at any primary unless he is duly registered in the precinct where he offers to vote and is a member of the political party holding the pri-

mary at which he attempts to vote. He is subject to challenge upon any ground that he would be challenged upon at a general election and on the further ground that he is not a bona fide member of the political party holding the primary at which he offers to vote. The judge at a primary election shall have authority to administer the oath, and judges of election have the right to determine whether or not a person is in the prohibited class. Voters shall vote at separate booths. The polls shall be open from 1:00 o'clock in the afternoon to 7:00 o'clock in the evening. The votes shall be canvassed as provided under the general election laws. The person receiving the highest number of votes shall be the nominee for the office. It is the duty of the county auditor to certify to the presiding officer of the convention the number of delegates and the names thereof elected. The cost of all ballots, blanks and other supplies to be used at primary elections shall be paid out of the county treasury. Nominations can be made by petition whenever the nomination is for U. S. senator, congressman or presidential elector if the signers are not less than three thousand of which not more than twenty-five per cent shall be residents of a single county; for a district office not less than nine hundred; for a county office not less than three hundred. These nominations shall be filed with the county auditor not later than the second Tuesday of August and no person shall file a nomination if he has voted or intends to vote at a primary. In order that the name of any candidate may be printed on the ticket of his party he must file and swear to a nomination paper not more than sixty days and not less than thirty days before the primary election, that he is a "member of the.....party; that I have not voted at the primary of another political party within a period of two years prior to this date; that I have not signed a petition for nomination of a candidate of a political party with which I am affiliated, and that I have not signed the nomination papers of an independent candidate for any office for which office candidates for nomination are voted for at this primary; that I believe in the greater part of the principles as set forth by the..... party, and will be governed thereby in my official acts if elected, and that I am not becoming a candidate as member of any partisan or non-partisan organizaton other than as a candidate of the.....party; that I voted at the .....city, village or town, with the .....political party at the.....election held in....."

In addition to such nomination paper the candidate shall produce and file with the county recorder at the same time as the nomination paper is filed a written certificate of the county chairman or the majorty of the county central committee or affidavits of five reputable party members of at least five years' residence in the county that he is then and has been for two years prior thereto a member of the political party on whose ticket he desires to become a candidate.

The constitutionality of this provision is subject to grave doubt. It is the duty of the county auditor of each county to prepare the official form of ballot given in the law. In connection with the matter of nominations by petition, no certificate of nomination made pursuant to the provisions of the law shall contain the name of more than one candidate and the names shall appear under the word "Independent." No person whose name is not printed on the official ballot shall be considered a candidate unless he receives twenty per cent of the votes cast for the office. Anyone who swears falsely to any material statement or matter in a nomination paper or certificate or other paper relative to his qualifications as a voter shall be guilty of perjury and punishable under the penal code of Idaho.

It is already apparent that this law is unsatisfactory and a definite fight led by Senator Borah has started to effect its repeal and a return to a purely direct primary.

My definite thought is that while we will never be satisfied with a convention system, we will never return to a purely direct primary. The former would be to court wrong influence from rings and bosses, the latter to invite the exaltation of our popular leaders to the rank of public masters, and, as well, the destruction of parties.

Once the direct primary has reduced the party functioning to the mere writing of a party platform, the party system is gone. In place of the association in party organization of men of the same general political views there will be only the great men, the individual leaders around whom will rally the people still interested in discussion and expression of political principles.

We have men in political life today who have no great tolerance for party rule or system, as it places bounds upon their power and makes their individual views subordinate to the majority in the party. These men would willingly abolish the great party system co-existent with and a very part of our government and under which the average citizen finds expresson and outlet for his views. If some great leaders today would not destroy party system they would at least weaken it to the point of uselessness. These men hunger and thirst for individual honor, power and control and knowing and realizing the party system is a check on the possibility of one man becoming a dictator of principle and government that they would destroy and remove this bar to their enjoyment of absolute power. They will raise the cry—ever the cry of the demagogue and the hypocrite in politics —"Let the people rule—let them register direct choice," and using this cry as the means they create a cloud of pretense of public solicitude behind which to work consuming ambition. All who cry, "Lord, Lord," shall not be saved and all who cry, "For the people, for the people," will not always remain undiscovered, as in fact, meaning by that cry, "For me, for me."

Let a party be shorn by an act, under the guise of a party aid, of

all power and reason for existence and we will have an unorganized people voting without true party guidance and following a leader who has charmed with his voice or assertions—a leader with no strong disciplining and discerning party to challenge his sincerity and consistency and put him to an accounting for his stewardship of the principles entrusted to him by his followers.

To such ambitious men it is not very difficult to make a choice between a pure direct primary breaking down the party system and a regulated primary preserving the power and importance of our historic party system. It is a choice for such a leader between becoming the master or remaining the public servant.

Beware then of the men in high or low official or political position who would wreck the American principle under which we have successfully endured one hundred forty-four years—the principle of assemblage and association in parties and groups of political thought. Beware of such a man no matter how strongly he commends himself as a people's champion, for he aims at the heart of American democracy the sword of personal ambition. He would make himself a dictator and a ruler in fact if not in name.

There must be found some way in which the good of the direct primary may be secured without destroying or sacrificing the good of the party system and convention assemblage. I am sure we Idahoans will find it and in finding it will not lose sense of the fact that the direct primary principle shall only be used as an aid to the better rule of parties and not as a destruction of that great American institution.

Undoubtedly some good will come out of the trial of the primary system and it may be that it can be used in connection with the convention system. We in Idaho are tired, at least for a while, of the direct primary and the begging voice of the political mendicant—the black flag of political piracy—the bandit mask of party theories—the tiresome self laudations of scores of candidates for minor offices—the orchestral effect of office seekers tooting their own horns—beating their tom-toms and clashing their own cymbals, and the gossiping and scandal of men and women who are willing at $5.00 a day to scatter atrocious lies and sow hatred in the interest of some candidate of loose and tapped wealth—the newspaper with its encomiums of praise at so much per line of candidates for every office. All these and more too we are quite willing to forget. We have made a thorough test of the direct primary law and have amended it to fit our conditions. We have acted under it for ten years and the sentiment of Idaho is against the direct primary as it existed in 1918. I was of those that believed the people should rule and should have a direct voice in the government, "as far as possible," and I still hold those views, but on one subject I think I have found the limitation of "as far as possible." Free choice by a voter and a direct voice in the

election of a party candidate is important but not so important as intelligent selection by a voter of a party candidate and it is not so important to have independent voice in the nomination because after all the nominee is the party nominee and should represent the thought and assembly of similarly principled men who receive and give the benefit of discussion.

The primary will be an issue in Idaho this year. I believe Idahoans do want a direct primary that will honestly aid the securing of greater interest in and clear, fair control of our great and small parties, but we do not want a primary system that will destroy parties.

I believe Idaho will not totally reject the direct primary idea but will not let it cover too much territory in operation and will confine it to its proper scope, that of giving members of a political party a direct vote and a stimulated interest in voting for the principal and important offices and at the same time selecting good representative men to adopt a "party platform"—conduct the party organization, keep it alive, vigilant and vigorous and select the best men for minor offices.

I do not care to close this address without making the point in it that the American people today cannot escape the duty of honest thought and attention to their political problems. "Eternal vigilance is the price of liberty." And in no other way than by the individual Amercan citizen giving his attention to his government and its problems can good government exist. We cannot successfully substitute inspiration for perspiration in the doing of physical tasks. We can not carry on a bitter fight by merely asserting that it is a bitter fight. There must be intelligent, honest sincerity of action in order to accomplish any great reform. We can furnish the most luxurious automobile but we cannot make the individual travel in it or use that automobile, and if he does not travel in it or use it, of course, building it is of no avail. So it is with getting the Amercan citizen to pay more attention to his government. We may devise the very finest of laws and institute the best systems, but of what use are they if the people will not use their God-given free will and mentality. If they neglect their duties as citizens then good government must fail, for there is no cureall for poor government, excepting only the rather bitter medicine of personal attention by the individual citizen to his duties and rights. On this point Merriam says:

"After all such remedies have been considered, it is clear that no readjustments of the political machinery can be relied upon to produce ideal political conditions. It is a common American fallacy to conclude that when a constitutional amendment, or a statute or a charter is secured the victory has been won and that the patriotic citizen may go back to the neglected plow. It is easier to secure ten men to fight desperately for good legislation than one who will fight steadily and consistently for efficient administration. Every student of politics knows, however, that there is no automatic device that will secure smoothly running self-government while the people sleep. Perpetual motion and automatic democracy are equally visionary and

impossible. The governor guages the pressure of public interest and regulates his conduct accordingly. The level of politics is in the long run the level of public interest in men and affairs political. Under any system the largest group of interested and active citizens will determine public policies, and will select the persons to formulate and administer them. The uninterested, or the spasmodically interested, the inactive and the irregularly active, will be the governed not the governors.

"Neither primary legislation nor any other type of legislation can change this situation. We may make it easier for the people to express their will; we may simplify the government and render it more clearly and directly responsible, but this alone will not insure the desired result. We may remove obstructions and hindrance and facilitate popular control, but we cannot do more.

"The direct primary system, is, therefore, to be regarded as an opportunity, not as a result. It signifies the opening of a broad avenue of approach to democracy in party affairs, but not the attainment of the goal."

FREDERICK VAN NESS BROWN

Harold Preston, Seattle.

Judge Frederick Van Ness Brown, a member of this Association, died suddenly at Victoria, British Columbia, July 6th, 1920, where he was temporarily sojourning for needed rest and recuperation.

He was born in Washtenaw county, Michigan, March 8th, 1862, of New England ancestry on his father's side, the history of the family in America extending back to the arrival of the ship "Lyon" at Massachusetts Bay in 1632, and embracing service in the Revolutionary War.

His father, O. S. Brown, is of the type of American pioneers whom we all love to consider as being the backbone of the nation. With eighty-three years of the hardest kind of toil and struggle behind him, his mind today is as active and alert as a man of half his age.

He married Esther A. Bailey November 11th, 1886, who bore him two children, a daughter, Jessica Marie, and a son, Howard Selden. Their family life was very happy, and from his association—which was more than ordinarily intimate—with wife and children, he derived constant and keenest pleasure.

When he was a boy of seven, his parents removed from Michigan to Shakopee, Minnesota, where the boy attended the common schools, and later for one year the preparatory department of Hamline University. Up to his nineteenth year he worked on his father's farm, averaging eight months of each year at farming, and four months at school. From his nineteenth to his twenty-first year he worked at St. Paul in the office of the locomotive department of the Chicago, Minneapolis & Omaha railroad. The next two years were spent teaching school and reading law in the office at Shakopee of Senator H. J. Peck. In 1885 (he was then twenty-three years of age), he was admitted to the bar in that (Scott) county, and formed a law partnership there with Judge Luther Brown, which continued for only about one year, its dissolution due to the death of the senior member. The next three years were spent in practice in partnership with Senator Peck. Then (in 1889) he removed to St. Paul, and there became special attorney for the McCormick Harvester Machine Company. This work involved trying cases in many counties of the state. The connection continued for three years, his work being very successful and very satisfactory to both attorney and client. Then (in 1892) he moved over to Minneapolis and engaged in general practice, in 1894 forming a partnership with George W. Buffington, which continued six years, and then with William A. Kerr, in which later association he continued until appointed in 1905 by the governor to the bench of

the District Court to fill a vacancy. In the next year he was elected to the same office. During this elective term he resigned, and entered into partnership at Minneapolis with William A. Kerr and Charles R. Fowler, which continued until he was appointed in April, 1909, to the position of attorney for the Great Northern Railway at Seattle. His services were so satisfactory to the railway company that he was later appointed its general attorney for Washington, Oregon and Idaho, and still later general solicitor, west, which position he held at the time of his death. His service was not confined to the purely legal. He was the principal representative of the company in the west; it was through him that matters of policy were handled, and he had a hand in shaping all the great enterprises of the company in the west from the time of his first appointment to the time of his death. This recital of his professional career indicates great legal ability, but those who met him professionally from time to time will agree that so cursory a recital of his professional life falls far short of disclosing his true greatness as a lawyer. All his legal work was marked by uniform courtesy and unfailing fairness to his adversary and honesty toward the court. On his part legal battles were fought ably and vigorously, yet without rancor. It has been well said of him that he had a splendid legal mind, was an especially good trial lawyer, enjoying the respect and confidence of court and bar and client; an able and just judge; an ideal lawyer, to whom the practice of law never became a mere business or drudgery. He was a believer in bar associations, and put that belief into action. He was president of the Minnesota State Bar Association in 1903. In 1901 its total membership was seventeen. It was through his special interest and personal appeals and the impetus which he thereby gave to the effort that the membership is now over three hundred and the organization a live and successful one. For many years he was the moving spirit of its meetings and its only representative at the annual meetings of the National Association. He took great interest in our Association, at the annual meetings was a frequent if not constant attendant, and performed faithfully and well the committee and other duties incident to membership. At the 1911 meeting of this Association he delivered an address upon the subject of Judicial Recall. It was replete with homely common sense, exquisitely expressed. Among the things said was this, of this, of an introductory character:

> "I have no personal interest in the subject of Judicial Recall except the interest of the American citizen in the success of government in the United States, according to the will of the people, subject, if possible, to the rules and fundamental laws established by our forefathers; but, in any event, whether subject to the constitution established by them or otherwise—in any event subject to the immutable laws of justice and fair play."

And later on in the address:

"In other words, with reference to all controversies that come before the courts, the rules of the game—if I may use a homely expression, for which we have high authority in this last campaign—should not be changed while the game is on."

Again:

"The courts are the forums wherein the private citizens have the truth of their claims established and where they receive the benefits and protection of liberty under the law and of self-government restrained by the principles of justice."

As these are read today, they are expressions of unselfish devotion to our country and our institutions, emanating from a fair, just and balanced mind.

After this country's entrance into the great war, he took an active and leading part in the attendant civilian work, and was a part of the Council of Defense organization, being a valuable member of the King County branch of that service. That branch contained four members of organized labor. It is memorable that they, suffering misgivings that he, a railroad attorney, should have been invited to membership, soon dismissed their fears and ultimately expressed appreciation of his uniform fairness and broad-mindedness in the treatment of questions which necessarily arose from time to time by which the rights of labor were deemed to be especially affected. His war activities, however, were not confined to that one branch—there was no movement or enterprise in which he did not willingly give his time and his good judgment and advice. There was none such to which he did not contribute financial support out of all proportion to his financial ability.

He was self-educated, but how wonderfully well educated, had read much of that worth reading, and what he read he retained in memory; he loved good literature and possessed the happy faculty of making book personages real live characters. When thinking of him, how delightful it is to remember his dialect recitation of French-Canadian stories, and then to recall some of his stories whether of personal reminiscense or legendary, told so inimitably, but never one involving any element of unkindliness. A recent review of his file of personal correspondence (necessary for probate purposes) is a liberal education in good fellowship. His nature was so kindly as to furnish in part the explanation of the universal friendship entertained for him by his associates. It is related that as he was about to change his home from Minneapolis to Seattle, some of his more personal friends among the lawyers planned a farewell dinner. This becoming known, many of his lay friends asked the privilege of joining in that honor, the occasion became a mixed affair, more than two hundred of his friends attending. He was deeply touched, and remarked to an intimate friend that he would not have had the courage to enter into contract involving the change of abode had

he known he possessed so many warm friends there, since at his then age he could not reasonably hope to make as many elsewhere. Of this fear he must have been disillusioned, for no man could have more friends anywhere than he had in the State of Washington. It has been written that "Friends are the sunshine of life." Then his life should have been in continual illumination. On the other hand, what a blessing his friendship was to the other man! For the evidences were so thoughtful, so considerate, so kind, so constant!

He was a noble lawyer, an upright judge, an upstanding and outstanding lover of his country, a man of broad learning, a jolly good fellow, the finest of companions, but over and above all these, his death was an enduring loss, as will his memory be enduring, for he was the best and the sweetest friend any man ever had.

REGULATION OF PUBLIC UTILITIES

Hon. E. F. Blaine, Seattle.

That justice may prevail, governments are established. When, by law, we fix a price or regulate a calling, we have in mind justice. We seek, in this way, to cause men to do what is right. We sometimes overlook the fact that a people's religion antedates their jurisprudence and that the laws of a people have the same general trend as their religion. Christianity is the prevailing religion of the Caucasian race. It is a part of the common law of England and of several of our sister states. It probably is a part of the common law of Washington. It has two great commandments, "Love God," "Love thy neighbor." None of our laws is intended to run counter to these precepts. They are, in fact, the spirit of our jurisprudence. "Thy neighbor" is not necessarily the man next door. He may live anywhere. He is the one with whom you come in contact and you are commanded to treat him fairly. You must not discriminate against him for such would be immoral, unchristian and might be unlawful.

Some men act upon the theory that what they have is theirs for every purpose, that they may do with it just as they may see fit. There is no sanction in our civilization for such an idea. We may do only what is right with what we possess. Infants are tempted to use what they have foolishly. For this reason we place their property in the hands of guardians.

There is but slight tendency for a people to declare in what manner a man must act toward his neighbor. There must be grievous and long standing abuses before a people will put upon their statute books regulatory measures controlling their fellows in certain callings. The common law is looked upon as the essence of the wisdom of the ages. The principles of statutes long since dead enter into it. The idea that men cannot do with their possessions just what may suit them permeates the common law. Before we put upon our statute books regulatory measures our courts had the power to render judgment against those guilty of discrimination when serving the public. Free and enlightened England deemed it prudent to regulate practically every calling, from the butcher to the railroad magnate. The Egyptians regulated the embalmers of their dead; the Romans their barbers and undertakers. Massachusetts, in colonial times, had regulatory measures and in 1869 she passed the first railroad commission law in the United States. Thus, it is to be seen that regulation is not a new field of governmental activity. It is probable, however, that we would have but few regulatory laws had our railroad men displayed more wisdom.

Washington, realizing that the great hinterland of the United States would never be developed in the absence of transportation facilities, was among the first to advocate the building of turnpikes, canals and improving the rivers. As the railroads have, in the main, accomplished the results that Washington and others had in mind, they are the glory of our material development. They are the best rail structures in the world. In mileage, terminals, equipment, schedules and volume of business they are in a class by themselves. They stand a monument to the genius of Americans, such as the Vanderbilts, the Goulds, the Fiskes, the Huntingtons, the Villards, the Hills, the Harrimans. They were great characters. The good they did is manifold; their shortcomings but mar their accomplishments. When we look back over the achievements of our countrymen, seeing, a hundred years ago, a vast wilderness reaching from the Lakes to the Gulf and from ocean to ocean, a tractless waste, sparsely settled by savages, and observing today this great domain, reclaimed with beautiful farms everywhere, charming villages and towns in every section, populous and wealthy cities in the various parts, common schools within the reach of almost every child, high schools at convenient places, colleges well distributed, church spires in almost constant view, splendidly built and equipped charitable institutions for the unforunate, beautiful temples dedicated to justice, industrial plants everywhere, a grille of telephone and telegraph wires flashing intelligence over the whole land, and a net of railroads through the bottom lands, over the prairies, spanning the rivers, following the gorges, clinging to the sides of cliffs and piercing the mountains, running four thousand ton freight trains, and palatial passenger trains, giving service to every community, uniting and making homogeneous in thought, in aspiration and in action, over one hundred million souls, we would be unworthy of our sires if we did not glory in their achievements and proclaim their work well done.

With this great monument in their honor, we will trace some of their few faults. When steam became a factor in mechanical operations American genius thought out the locomotive and built the first railroad. This crude structure pointed the way to what we have today. In the forties and fifties of the past century the railroads remade sections of our country. Where they were built new commuities sprang up and many of the old ones grew apace, and places not served died a sure and certain death.

Before and after the Civil War railroad building became a mania. In many instances, when one road would have answered every reasonable purpose, two or more were built. Some were built just "to dragoon" those already in operation. It was not long before there was competition in railroad transportation. Rate wars became common and they were fought with all the intensity of the master minds back of them. There were instances when vast volumes of freight

were carried at an out of pocket loss and passengers were paid to ride. As the competition bringing on rate wars was at common points where there were two or more railroads and scarcely existed at noncompetitive points, the rate wars affected mainly competitive shipments which resulted in the rankest discrimination as to communites served by only one carrier. Usually rate wars were settled by the railroad men getting together and establishing a schedule of rates higher than any theretofore existing, even increasing charges at noncompetitive points, the excuse being to make up for past losses. These arrangements were merely truces and, to a large extent, ignored the rights of the "inarticulate mass."

Fortunate indeed, under regulatory statutes, rate wars are practically things of the past.

It was in the seventies, after the railroads had reached out over the vast prairies of the West and grain elevators, stockyards and other industrial plants became centered at converging points of the railroads, that the rankest discriminations were practiced. The situation became so grave as to arouse the ire of the long whiskered yeomanry of the prairies and these horny handed sons of the soil joined the grange, put their own kind into office, placed upon the statute books regulatory laws with teeth in them and forced upon Congress an investigation of transportation practices. To these patient, sturdy men we owe a debt of grattude. The doctrine of hate was not in their souls.

The American people have never disliked the railroads as such. They have only questioned their management. They have been generous to the railroads. They gave, in their construction 150,000,000 acres of land and contributed in cash and bonds three-quarters of a billion dollars, and the common people today own a goodly portion of the twenty billion dollars of the stocks and bonds of the carriers. It is inconceivable that our people wish to destroy, or even cripple, this agency which has made possible the development of our national resources and which is essential to our further progress. Regulation, being for the purpose of establishing justice, should not be distorted into an agency of destruction. In our blind wrath we must not pull down the support of the temple. It is our duty to eliminate the defects which exist in the management of our railroads. They are not major; they are decidedly minor.

The two great abuses against which the grangers raised their voices and voted their convictions were rebating and discrimination. Grievous as these thing were, so far as the individual shipper is concerned, they have practically ceased. But, should our regulatory statutes be repealed, there is no doubt that in a short time these evils would again afflict rail transportation.

There is, however, some discrimination yet practiced, not as to individual shippers but as to places. Lower rates are still maintained

at competitive than at noncompetitive points. Most of the regulatory statutes permit this discrimination. The law in this particular is wrong. My factory, gravel pit, stone quarry, mine, saw mill should have the same rate for the same length of haul whether served by one or many carriers. If served by one carrier, that carrier need not solicit my business, which is a saving. Discrimination as to places retards development in that it gives unnatural advantages to some localities. It is the industry that is entitled to service. The coal mine having two or more carriers serving it may soon be exhausted. Its product may be, by reason of favorable rates, carried into localities having undeveloped mines which too might be worked if a parity of rates existed. In the years to come, when the present mine is exhausted and the mines at noncompetitive points worked, their output will be shipped into the present competitive districts. This is all unnatural and results in a large amount of cross hauling. In a sense, it is carrying coals to Newcastle. Permitting competition as to communities tends to build up centers, congest our population and affects our economic and social life. With a commission to regulate rates at all points, it should be sufficient for the railroad companies at competitive points to gain such advantage as they can by reason of better facilities, quicker despatch and such accommodation as may be the result of hiring competent and accommodating employees.

It is exceedingly questionable whether at competitive points the railroads be permitted to hire solicitors, either for freight or passenger business. The stock in trade of the ordinary solicitor is that he is in a position to so advise the shipper that he will not only get quicker service, but, in case of overcharges and damages, he can be of material aid to him. As it is the business of the large shippers which, as a rule, is solicited, this may be the source of undue advantage to them.

Transportation charges in some countries are based upon the cost of the service. In the United States, the theory of rate making is "what the traffic will bear." The enemies of the American system have added the word "All." "What the traffic will bear" and "All the traffic will bear" are sentences of unlike import. Railroading in the United States, where the hauls range from station to station up to three thousand miles, is vastly different than in the small countries of Europe where the hauls are short. If all commodities were carried at cost of service, it is quite sure that many of the products of Washington could not be marketed. This state now produces some twenty million boxes of apples a year. Based upon cost of service it is probable that, one year with another, they could not be shipped to the Atlantic seaboard. Our farmers grow many potatoes. They only have an out of state market in the years when there is a scarcity of potatoes in certain localities and prices are reasonably high. Under the plan of "what the traffic will bear" potatoes can be shipped a

longer distance than under cost of service theory. In the last few years we have moved out of the State of Washington an immense amount of lumber. It has taken a low rate, a much lower rate than it would have received had the rate been based on cost of service. Had it taken a higher rate, much of it would not have moved. A fully developed district where all of the products have a nearby market might thrive on a system of rates based upon cost of service, but a section producing more than it consumes would probably go backward if cost of service were the prevailing rule in rate making.

Making a schedule of rates under the plan of "what the traffic will bear" is a most intricate matter. It is a true saying that such a schedule is not made out of hand, it grows. It is a tryout and may need several adjustments, while, to establish a system of rates under the cost of service plan, is to make use of the yard stick. It stands to reason that, as long as the American rule of "what the traffic will bear" is in vogue, conditions of varying intensity will exist between the carriers on the one hand and the shippers of various products on the other. Under the doctrine of "what the traffic will bear" common brick takes one rate and pressed brick another and there is little or no relationship between the charge for hauling a carload of slab wood and for hauling a carload of silk. It is rather a difficult proposition to convince the manufacturer of pressed brick that his commodity should pay a much higher rate for the same distance than is paid by the man shipping common brick. If we were interested only in the welfare of the manufacturer and the producer, it is probable we would not tolerate a schedule of rates on the present American plan but the rights of the people, as a whole, are to be considered. The mass is intensely interested in common things. With them it is ever a question of having their necessities supplied. Necessities make up the bulk of commerce. The larger the range of production of necessities, the cheaper they are likely to be. The wheat of Washington has an influence upon the flour markets of New York City, London and also of Shanghai, and the lumber of the Northwest influences the price of lumber the world over. A bountiful supply of potatoes in the Yakima Valley has an influence on the price of potatoes, even in Texas. "What the traffic will bear" is, after all, not unjust. It favors the mass.

In building a schedule of rates under the American system, a horizontal line is drawn representing the out of pocket cost, the theory being that no freight should be hauled at a rate running below this line. First above the line comes the cheaper and bulky articles, mostly raw materials. While the rate per ton is low on raw materials, the volume being great, it is a source of profit to the carrier. Next may come the cheaper, bulky food supplies and manufactured articles of large tonnage. These, as a rule, take a higher rate than raw materials, and so on up the scale where, at the top, are to be found the

luxuries. Under this scale everything contributes some share to the railroad enterprise and the average should be such that the companies may have a fair rate of return upon their fixed properties devoted to the public use.

Another matter in railroading and in transportation is the relationship between the main and the feeder lines. As a rule, there are lower rates prevailing on main than on the feeder lines. The main lines, as a rule, pay; many feeder lines do not. Thus, some are led to the conclusion that the main lines are the support of the feeder lines and that those using only the service of a main line are paying for the upkeep of the feeder lines. This may or may not be true. The feeder lines assemble the freight for the main lines. The haul on the feeder lines, as a rule, is short, as compared with the haul on the main line. On certain shipments a feeder line may receive very little above the out of pocket cost. These shipments, however, being transported for a long distance over a main line, will give to it a substantial profit.

Some two years ago the Public Service Commission of Washington was called upon to consider the application of the Puget Sound Navigation Co. for an increase in rates upon all of its boats plying upon the waters of Puget Sound. This company maintained many routes, the principal one being the Seattle-Tacoma service, the next the Seattle-Bremerton service, then the Seattle-Victoria run, and many minor runs to the water-locked points of Puget Sound. Certain boats operated on certain routes, the company having some reserve boats to take the place of those temporarily out of commission. All of the boats of the company had been valued by the Public Service Commission. The boats on the Seattle-Tacoma run were making a nice return on their value and so were the boats on the Seattle-Bremerton route. All of the other routes were unprofitable, some of them being maintained at a heavy loss. The history of the company showed that the Seattle-Victoria route then losing money at one time was a paying proposition, and such was the situation as to the run from Seattle to LaConner Flats, and the evidence was to the effect that from revenues in early times derived from the northern routes the Seattle-Tacoma route had been maintained. The company maintained a transfer at Seattle so that, without expense or trouble to the shipper, fre'ght was transferred from one boat to another, which was a great convenience to the shipping public, particularly to the people moving with their goods from one place to another. The people of Tacoma and Bremerton objected to the increase in rates and strenuously insisted that it was not fair that their rates should be increased in order to maintain what they called an unprofitable service elsewhere. It was urged that each route was an entity and that the fact that they were all controlled by one company was purely artificial and could not affect the equities of the case. It clearly appeared that, if the company should

materially increase the rates on its boats serving the water-locked points, there would be such a decrease in the movement of passngers and freight that it would lose rather than gain by such increases, and, unless the company was granted substantial relief elsewhere, it would have to cease running boats to the water-locked points. The Commission, after much study and reflection, applied to all the boats the doctrine of "socialization of rates." This doctrine, as a matter of fact, is not new. It is as old as trade or business. No farmer, no merchant, no business man of any kind seeks to make the same rate of profit out of everything handled. Purposely some things are handled at a loss, but they, nevertheless, have a fixed place in an enterprise. It is probable that the merchant who might seek to make each and everything in his business bear its just proportion of the cost and return a just proportion of the profit would lose his effectiveness in such refinement, and failure would be the result.

The life of a public service commissioner is not an easy one. Since the beginning of the World War his troubles have been manifold. The rising cost of labor and material necessitated increases in rates. There has been slight opportunity to rule in favor of the mass. Many of the state commissions during the last four years have come to grief. Those which have suffered most were those which sought to straddle. They failed to measure up to their duties as imposed by law.

The mass yet fails to recognize that, in order that there shall be regulation, each utility regulated must be governed by fixed rules. It is not a difficult matter for a utility to abide by any reasonable set of rules. They become routine in an office. They are not, however, such to the ordinary patron. The utilities, having been regulated, the patrons wish to remain unregulated, not realizing that, if they remain unregulated, the utilities cannot be regulated. Take, for instance, the provision that, on the prompt payment of a bill, a discount will be allowed. Those who do not take advantage of the discount declare that they are penalized and deem the company exceedingly mean for charging them extra for some slight delay in payment. If the rule of prompt payment should be dropped, a utility might carry certain customers a long time without payment of interest, even lose the principal, and be insistent upon prompt payment of bills by others, which would result in discrimination. The utility must charge for everything and those charges must be uniform as to all patrons or classes of patrons. It is no longer in a position to grant favors. The country merchant may give a stick of candy to the fond mother for the baby at home, but not so with a public utility. The utilities are in straight-laced jackets. Consequently, you may go where you will in the State of Washington and inquire of the patrons of any public utility and about the first thing they will inform you is that the management of the company is in the wrong hands, that it is not sympathetic. This will change. Regulation with

us is comparativley a new matter. In the years to come, when future generations have grown up under the system, it will be deemed commonplace. They will be less complaining.

The mass do not yet fully realize the effectiveness of regulation. It is yet possible for a promoter to go into a community fairly well served and ask for a franchise that there may be competition. Lately in the city of Chehalis, where there is an old company rendering a good service at reasonable rates established by the commission, a new franchise has been granted to another company in the same field of activity. There is no possibility of competition. There will be a loss. The business men of Chehalis stood against the new franchise, the mass insisting upon its being granted. The mass won out. Ignorance and passion prevailed over common sense.

Any commission having the power to review rates will maintain a certain relationship between rates of like utilities in similar sized communities.

Where one form of energy is in competition with another form of energy rate regulation becomes difficult. It has only been a short time since electricity entered the lighting field. In that field it has practically eliminated gas. Gas has entered a new field, that of heat. In this field it comes in competition with wood, coal, fuel oil and even electric energy. Will gas survive the contest? In giving it a chance for its existence, should commissions be too strict in regulating gas rates? Would not liberty of action on the part of the gas utility be fair under the circumstances? Of course, the gas company should not be allowed, under any circumstances, to discriminate or rebate, but it may be that its schedule of rates should be practically of its own making.

Our public utilities enter into our life and well being to a greater extent than the ordinary man appreciates. They must be maintained for their failure will but lower the standard of the mass. We have called them "public utilities" because the people have an interest in them. Their service is open to all. They are not self-concerning; they concern the public. It would be more dangerous to destroy these than to destroy the property of some individuals which is not devoted to a public use. As we have already said, regulatory statutes are for the purpose of maintaining justice. This justice is just as much due the utility as the patron. Rates of public utilities should always be maintained so that any utility, judiciously conceived and well managed, should have a rate of return that will give it a standing in the money markets. In starving one of these utilities, the people are doing injury to themselves. Who would care to live in a community with a broken down traction system, a worthless telephone system, an uncertain lighting plant, a still more uncertain heating plant and a water system failing to furnish an ample supply of wholesome water? Personally, I would as leave make my home among farmers,

with unhoused machinery, wagons with wobbly wheels, horses with countable ribs and toggled harness, barns and houses unpainted and pigs running at large, as in a city with dilapidated public utilities. The best is the cheapest and the best is none too good for progressive Americans.

A rate hearing is not a law-suit. It should never become one. Under the law of this state, the Public Service Commission is authorized to employ expert accountants, engineers, traffic men, etc., to assist it, and the commission is clothed with full authority to go into the books of a utility. They are in a position to investigate and determine the facts as to any matter pertaining to rates, facilities and services, and the commission is always willing to investigate anything within reason asked for by any party to a hearing. The commission seeks the facts, and constantly strives to do what is fair and reasonable between the utility on the one hand and its patrons on the other. There is no real need of either the utility or its patrons seeking much information outside of that which can be gained by the commission through its aides.

The facts are ordinarily not difficult of determination. The serious question is what order the commission should make in view of all of the facts. It is here that both the utility and the patrons could be of great service to the commission if they would both earnestly seek to do what is fair in the premises. There are burdens to be borne. To properly adjust these burdens between the utility, its patrons and the different classes of patrons is a delicate task. An impassioned speech will not aid the situation, and seeking an undue advantage is harmful. If all interested would proceed on the "live and let live" policy and earnestly seek a fair solution of the problem in hand and, with the utmost fairness discuss the situation with the commission, much good would be the result. Some lawyers at a hearing think that it is their duty and that they are making some progress in charging the other side with serious and manifold faults. These tirades are worse than useless. They are not convincing, but, on the whole, tend to prejudice even the commission against those making them.

There are some who assert that regulation leads to socialism. It should not have such a tendency. In certain activities there are public interests. Regulation should only affect these interests. Confined to these interests regulation should not curtail individual efforts nor permit a substitution of the mass or socialistic effort for individual efforts. This danger, if it exists, can be controlled by choosing for commissioners men of understanding and men ever ready to act upon their convictions.

"Regulation enters the economic field." It greatly extends the lawyer's activities. The utility lawyer must be versed in both law and economics. To measure up to his responsibilities he must have vision. In this enlarged field he must be more than advocate; he must, under all circumstances, cherish the welfare of the state.

LAW AND PUBLIC OPINION

M. A. MacDonald, K. C., Vancouver, British Columbia.

My first word must be one of appreciation for the honor you have conferred upon me in permitting me to address members of the American Bar Association of the State of Washington, assembled in annual convention in this city bearing the good Scottish name of Aberdeen.

My second word must be one of greeting from members of the Bar of the Province of British Columbia conveying to you, brother members of the same noble profession in the State of Washington fraternal greetings fraught with that spirit of good fellowship which gives zest to life and forms Heaven's choicest gift to the sons of men; greetings so warm, so cordial as to belie the common view that we as legal practitioners are a sombre race of dismal intellectuals, so engrossed in musty tomes and ancient precedents that we have no taste for the lighter wines of life. These greetings, I repeat, are of the warmest and most cordial character. Two boundaries separate us: One a national boundary defended on either side by nothing more formidable than customs officials who like ourselves are officers of the law; the other an invisible boundary dividing the two professions only, in so far as machinery is concerned. We in our practice in Canada differ from you somewhat in methods of court precedure, in law administration and in certain constitutional aspects, but our aims, purposes and ideals are absolutely similar. These differences in method form the other boundary between us. If by mutual consent of your State legislature and of our Provincial legislature you were suddenly permitted to practice in our courts and we in yours neither of us would feel quite at home for some time. But, after all, these two boundaries are in the deepest sense entirely artificial. The national boundary serves the same purpose between the two countries as a line fence between two neighbors. It divides the property between the two men, without in the slightest degree interfering with the spirit of neighborliness existing between them. The boundary between us as members of the Bar of British Columbia and you as members of the Bar of the State of Washington, made up as it is of different methods of procedure, nomenclature, and machinery are after all mere matters of form and only serves to give that absence of deadly uniformity which is fatal to growth without in the slightest degree impairing the neighborly spirit underneath, a spirit founded on the eternal principles of justice common to both systems.

I come to you today, therefore, as your next door neighbor, as your brother-in-law to take counsel with you, to discuss with you—in language I trust so simple that even a lawyer can construe it without

the aid of the courts—things of the head and things of the heart, matters material and matters sentimental, although we are usually thought to be without sentiment.

My third thought or effort will be to lay a foundation by a few general observations for what I propose to make the central thought of my address to you today. In order to do that, may I ask a question, "With what are we chiefly concerned as members of our profession?" A hasty answer would not be satisfactory. One would be inclined to say on the impulse of the moment that we are chiefly concerned with law-making, if we are members of State or Provincial legislatures; with law administration if we hold an official position in the state; with law interpretation and the fair judicial adjudication of conflicting interests in the community if we are members of the bench; with the expounding of legal principles if we are professors in our law schools or with forensic effort if we are practicing at the only bar not yet abolished. These are the various activities with which we are chiefly concerned we say, because they are the immediate tasks at hand. But that is a shortsighted view. A little reflection will make it clear. The school teacher may in the same way say that he is chiefly concerned with teaching mathematics, grammar, euclid or literature. But is he? If that is his conception of his work it must be drudgery indeed! He is looking at the trees instead of at the forest and he cannot see the forest for the trees. The fact is if he is at all fitted for his task and has his head in the air—in the pure air—where things eternal and fundamental are found, and his feet firmly on the ground, he is chiefly concerned with character-formation. And so we, gentlemen, it seems to me, are chiefly concerned not with law-making, law-administration, the judicial adjudication of conflicting interests or forensic effort, but rather with the creation of that great silent subtle force known as "Public Opinion" which if it is sane, wholesome and sound will open as with a magic key the door leading to progress in social, economic, national and world-wide conditions. Because, sir, healthy well-defined public opinion must precede social, economic or national reform. And sir, if we take as we should take this high conception of our work we will no longer be creatures of the day, the few brief days of our existence; instead we will be linked up with the traditions of the past and the hopes and achievements of the future; citizens not of a period but of a great epoch.

I hope, therefore, to be able to so develop my thought today that we, too, as members of our profession in our daily round of work will look, not at the trees but at the forest; not forgetting that the trees of many different varieties, some labelled court procedure, others practice, others law-administration and so on through the various grades of our activities as practioners, all make up the great forest of sane and sound public opinion so absolutely essential to

achieve the results beneficial to mankind of which I will venture to speak.

Oh, but you may say we lawyers, law-makers and law interpreters are not the only class in the community who mould and create public opinion. Would it not be arrogance to make such a claim? Public opinion, you say, is formed in countless ways. It is formed by the intercourse of minds in private conversation. It is formed by the press which claims the attention of millions morning and evening every day, their noses buried in its pages as if they hoped to find there the elixir of life. It is formed by politicians or statesmen, if you will (although most politicians become statesmen only after they are dead), who declaim from a hundred platforms in strident tones. It is formed or fostered by the pulpit every week proclaiming a medley of creeds and working to beat the devil. It is formed by speakers, essayists and pamphleteers, in short by a thousand different tongues, as different as those on the Tower of Babel. Of course, all these instrumentalities have a place in the formation of public opinion. They have this part in its formation. A settled conviction or what might be termed for want of a better phrase an "agreed-upon public sentiment" may now and then be thrown or projected, so to speak, from this great molten mass of conflicting views with which we are inundated, from this babel of sounds around and about us and this "settled conviction" in the public mind may find its place or orbit in the realm of public sentiment and become part and parcel of the opinion of the day. Let me illustrate it in another way. Some scientists tell us that our planetary system owes its origin to this phenomena. The earth once a molten mass with many seething forces burning within it, in its swiftly revolving revolutions in space, threw off parts of its molten mass into the void and these parts or planets, as they are called by the operation of centrifugal and centripetal forces, at length found their orderly orbits in which they move serene and undisturbed without danger of conflict in the orderly march of the universe. It is in the same way these settled and accepted planets of thought which finally find their orbit in the consciousness of mankind that I call "Public Opinion," meaning thereby sane public opinion; everything else is simply "Public Clamor," represented by the thunder and lightning always spectacular but usually spending itself in its own effort and yet at the same time attracting a good deal of curious attention. The spurious always attracts attention. Fragments of public opinion are therefore derived from all the various sources enumerated, but only fragments. And having said that I come back to my first point and assert that it is in the realm of law, having to do as it has with orderly thought, with the laying down of principles, with the removing of false conceptions, with the storing up of precedents following upon precedent; with the selection of the good in all views and the rejection of the bad resulting in the

creation of a law, a principle or a statute, the expression of all these and kindred combined activities, all the product of law make up what I say is "Public Opinion" in its true sense sane, wholesome and sound; stripped of the dross in so far as imperfect mortals may do so. Informed public opinion, therefore, not necessarily as it is but as it should be, is the result of the scientific application of legal principles to current issues and events. And in reaching that point, in forming that "Public Opinion" we can claim not boastfully but with a consciousness of the responsibility it entails, that we in the profession of the law are and will be its chief artificers. And if lasting not ephemeral results are to be obtained these settled convictions must always precede any new departure in human activities whether that departure be the uprearing of a new social edifice, or a new national or international edifice for the future, sir, if these things be true, what worthy conceptions, what noble ideals, what scope for opportunity and what a weight of responsibility is bound up in the profession we delight to follow!

Now let us analyze this question a little further. Let us see if we are making extravagant pretensions in coupling law and public opinion together; in apostrophizing sane public opinion as the Goddess of Reason, placing it on a pinnacle, making it fit object of our veneration, even worshipping it, in a metaphorical sense as the unseen God that directs the destines of the race, the moving uplifting force in the community and the nation from whence cometh every good thing, always assuming of course that the fountains are kept pure. In civilized countries it is a trite maxim that all law must have public opinion for its basis. Austin defined law as a command. But that definition is practically obsolete because it smacks too much of military discipline. Commands are for the camp and the garrison to be used only in military emergencies when the normal must give way to the abnormal. Statutes which have not the support of public opinion behind them are ineffective. And let me say here in parenthesis that law doesn't necessarily simply follow public opinion. If it did and we simply trailed behind, following where public opinion led the way, my argument that we in our profession with all its kindred activities are the chief artificers of sane public opinion would fall to the ground. Statutes do follow public opinion but law does not. Law precedes it and forms it. The statute is simply the expression of law; it is the formulating in words of legal principles which incubate in the public mind until public opinion on the point in question is formed. But this is only by way of digression, a little peregrination into a bypath to cover what otherwise might be thought was a loop-hole in my argument that public opinion is the result of law, not the cause. I said before that statutes without public opinion behind them are ineffective. Without public opinion behind them they fail to accomplish the purpose of their enactment and are often unenforceable. You may cha.

lenge that statement and say that laws are often passed which do not originate in any public demand. Quite true. But is it not equally true that sooner or later they must stand before the Bar of Public Opinion, and if they fail to measure up to its demands they become obsolete? Just as the pendulum, if thrust to one side for a moment, will come back to the perpendicular so public opinion sometimes changes for the better, at other times it will drift into dangerous channels, but always there is the majestic force of fundamental law to draw it back to the eternal equilibrium, and it is by this restraining here and giving impetus there that the work of law is manifest.

Gentlemen, we have recently passed through a disastrous war. The world was drenched in blood. Millions of homes are today houses of mourning, the abodes of sombre grief only relieved by the recollection that the lost died gloriously in a glorious cause in order that the ideals of liberty, justice and faith might not perish from the earth. Why did this war occur? Why were the mad dogs of war unleashed? Well, you might speak of the causes of the war for several hours, perhaps days, but that is not necessary. All you have to say is that "Public Opinion" in one corner of the universe, to-wit, in Germany, was not sound, it was distorted, mercenary and grotesque. Their perverted public opinion wearing the countenance, not of the Goddess of Reason, but the distorted features of Mephistopheles was not the product of law which governs man or nations in their relation to each other; it was not the product of any legal principles found in any recognized law book, applying to persons, property or things. Their public opinion was not the product of law, either human or divine. It was a mis-shapen grotesque monster of hideous mien and to be hated even by their own people it only had to be seen with the mask removed.

Ah, how costly it is to tamper with the foundations of justice; to pollute the wells; to divert the streams of justice which down through the ages, always, when followed, directed the great channel of humanity into safe courses, and when departed from led them into the deep pit and the miry clay. Law like an outraged maiden covers its face and rends its garments when the halo of Righteous Public Opinion which surrounds her brow is torn away for a time, and a crown of thorns, typifying selfishness, greed, avarice and false ambition, is crushed down upon her head. But it is not for long. Public opinion or public justice—because my submission is that justice is simply the enlightened opinion of mankind—public justice or public opinion when outraged, though garbed like a maid, can assume the form of a young giant, manacled, and burst the bonds. The bonds on the one hand or the crown of thorns on the other are removed by the Sir Galahads of the spirit of justice, plumed knights, invisible to the ordinary eye, bearing in their hands a blood stained banner with this strange device "Public Opinion." The wounds are healed, the thongs removed and

she again appears resplendent as before, only now wearing a plaintive look as if to say, "will this outrage occur again?" And she pleads with her votaries, those who in other days built up line upon line, precept upon precept, and precedent upon precedent, the great edifice of the enlightened thoughts of humanity, to build up again the broken walls. And when that is done the halo once again illumines the brow and transfigures the countenance. That, when accomplished, is what I call the formation and restoration of an enlightened Public Opinion, the Hope of the World.

Look abroad in the field of international law and we again find that to a pre-eminent degree in that sphere, the public opinion of mankind, is the only power that can give it sanction. We all, of course, know the fundamental difficulty in applying and enforcing international law. Local law, the laws of sovereign powers, countries, states or parishes are enforceable because a police power in each, representative of the strong arm of the state, is kept in readiness to see that its decrees are executed. Of course this police power must have public opinion behind it in its turn else it would be entirely impotent. But in the international field there is no police power in the back ground to enforce its decrees. Indeed international law is largely a misnomer. It is not a law in the general accepted sigificance of that term. It has no existence in the sense in which the term "law" is usually understood. Because there is no tribunal to enforce its decrees it is somewhat misleading to apply the word "law" to it. There have been efforts made to establish international courts or their counterparts at The Hague and by means of the League of Nations, the outgrowth of the late war. These "International Courts," so to speak, are not yet established, they are only in the making in the melting pot. Why? Simply because "Public Opinion," in this case "World Opinion," so far as civilized nations are concerned, has not yet reached the point where it can give to such a court that necessary public sanction required to make it an effective force in world affairs. Public thought, on this question has not yet reached its orderly orbit. It is today in the stage of "Clamor" or "Jargon"; but I feel confident that the "settled thought" will eventually emerge out of the present day clamor of arguments pro and con and that sometime in the future, perhaps in the dim and shadowy future beyond our time, international law will yet obtain that "Public Opinion" that enlightened "Public Opinion" of mankind which alone can make it effective. Can we doubt it? Is war to continue to be the only method of settling international disputes? Surely not. Surely man who has conquered the forces of nature, who in the fields of science and invention has astonished christendom with his genius, is not going to confess utter failure in the altruistic field? We need not be altogether discouraged with the progress made and we should be hopeful for the future. The Indians settled their feuds with the

tomahawk not so long ago, the natural way for them because they were semi-barbaric; gentlemen, too, settled their feuds by fighting duels within comparatively recent times, on the so-called fields of honor. What is a nation but an aggregate of individuals? If public opinion can banish duelling from among men, it can drive international duelling from among nations. The task is harder, that is all. But we are craven-hearted if we shrink from the task.

We as lawyers specially trained for the task, must bend our energies to the development of that "Public Opinion" necessary in the field of international law. Great strides have already been made. The principles and the rules of international law have been fairly well settled; that is the rules which nations have agreed to abide by in their conduct towards one another are clarified today. They are sometimes the subject of controversy so far as their application to particular questions under consideration is concerned, but in the main the underlying principles are well settled. Still all its decrees, its inhibitions and directions may be treated as scraps of paper. The one thing needful is that the great lack, viz., the absence of any recognized tribunal to enforce its decrees shall be supplied by the development of that irresistible force of world wide public opinion so far at all events as the leading civilized nations of the earth are concerned. I would ask you to keep this in mind when I speak later of the great need for the development of the most cordial relations between your great republic and our great empire, because these two great commonwealths are bound to be the great custodians of civilization, the center from which the light of righteous public opinion must radiate to illumine the whole world.

Now let us move on to another field none the less important, a field that challenges our best efforts. I refer to the social industrial and economic field. If it is imperative to remove war as a means of settling disputes between nations, it is to an almost equal degree necessary to remove industrial war as a means of settling industrial disputes. If it is imperative to create a great controlling public opinion to dissolve national animosities is it not equally important that the beneficent rays of the same sun—the light of the world—should be used to dissolve social and industrial animosities? Has the lawyer any business in this field? Why not? Legal principles must be applied, first in the removal of causes of complaint and then when removed to the protection of the general public because there are neutrals in every industrial conflict. In industrial war as in international war we have the belligerents and the neutrals and the neutrals sometimes suffer greater loss than the belligerents.

I will not detain you by tracing the law governing the relations between employer and employee, master and servant and the rights of property from the earliest times. That would be a large subject in itself. I merely mention it so that you will at once perceive that all

social and industrial problems are questions of law and I am on sound ground when I say that we as lawyers must take part in these controversies in moulding and creating public opinion so that lasting beneficial results may be achieved, waste eliminated and what is more important still, the spirit of strife displaced by the spirit of harmony.

What is behind industrial conflict? Reflect upon it, get down to fundamentals and you will find the same forces behind industrial war and international disputes. What is it? It is the acquisitive and combative instincts in man. Both instincts perfectly praiseworthy if controlled; fearful in their consequences if not controlled. Again "Public Opinion" is the solvent; the sun in the Heavens which must be allowed to dissipate the clouds of doubt and strife. Let me repeat a parable. The wind and the sun once had a dispute as to which could the sooner induce a traveller walking along the highway to remove his coat so that he might go along in the contemplative peaceful atmosphere which we associate with the man striding along with his coat on his arm. So they agreed to try their methods on the man. The wind began to blow and bluster, but the harder it blew the traveller, instead of removing it, gathered it around him tighter than before; in fact, he turned up the collar until his head was scarcely seen above it. Then the sun took its turn, the sun with its reconciling powers. It shed its beneficent rays upon him and behold the traveller of his own volition removed his coat, threw it over his arm and pursued his journey. The sunny way is the better way. Sir, it is often the simplest truths that are hardest to understand. It is the sun of sweet content and reconciliation typified by enlightened public opinion that alone can properly divert and control the acquisitive and combative instincts in man to which I just referred.

Gentlemen, it is particularly true at the present hour that the great social and industrial question must be grappled with else confusion will become worse confounded. Many today are apprehensive, fearful of what the future holds in store. We have confusion on all sides; bad tempered recriminations, emotionalism, syndicalism, and many other "isms" rampant. Let us not assume that everything will come out all right in the wash because it will not unless the water is kept clean. The waters will continue muddy until we take enough pains to get down to clear, straight, hard thinking, finding from the storehouse of law and experience the just principles to apply to the situation and then to fearlessly apply them. Again, I ask, is it within our sphere as lawyers to formulate principles applicable to the industrial situation? Who can doubt it? Laws human and divine are the finger posts pointing the way to safety. It is true that law is not an exact science like scientific or natural laws. They are fixed and immutable. In the scientific world one can state with accuracy that certain phenomena is bound to occur because the laws governing it are fixed. But law as applied to humanity, to property, persons and

things, is not fixed and immutable. What we call the common law, or what are really great underlying principles, is fixed except in so far as inroads are made upon it by legislative enactment. Great principles do not change. But their application to varying conditions of society do change. It is, therefore, peculiarly within the field of law to apply its principles to economic and industrial questions. It was ever thus down through the ages. Search the annals of history, trace the course of events from creation's dawn and you will find there the records of great law-givers beginning with Moses, sages, with their heads above the crowd ever standing in the breach directing the great channel of humanity, meandering along with heads down engrossed in their own petty spites and rivalries into safe and sane courses. Sir, the record of their achievements form the beacon lights of history. As time goes on and life becomes more complex and contending interests more venomous,' the need for this leadership and direction of the tide of humanity is intensified. Leadership and direction in these latter days comes in a silent subtle yet sure-footed way from the inculcation in the public mind of great principles from which public opinion is formed. Leaders will pass away. Principles if they are sound—never. When men follow leaders merely, factions develop; when they follow great principles a public sentiment crystalizes operative for good. Aaron dies, Moses passes, but the ark of the covenant remains forever defying the elements of time.

Then again the duties and relations of man to the state are governed by law. "Render unto Caesar the things that are Caesar's"; "The laborer is worthy of his hire"—the Bible is full of legal principles accurately defining the rights and duties of citizens, and human law approaches perfection only as it approximates to Divine law. There is a great Divine law expressed in the Biblical question "Am I my brother's keeper"? This law, with advancing thought, is being rapidly incorporated into human law. We have, as always, good and bad citizens in our midst, and the tendency today in criminal law is to rescue and reclaim rather than punish, particularly with minors where rescue work is possible. We are beginning to realize that human resources are greater than natural resources and that conservation is the need of the hour.

I don't care whether your neighbor is a good citizen or a bad citizen the more perverted his views are, the more perverse his tendencies, the greater need has he for sympathy, assistance and helpful correction. His kind left untouched makes the jungle; touched with the friendly assisting hand of kindness and of counsel he makes up the neighborhood. Of course if the viciously inclined abuse national hospitality; if they allow the day of social grace to pass without profiting by it, then even deportation may be justified as a punishment and as a precaution against contagion. You, my American friends, have been enlarging your avenues of trade by exporting de-

portees lately. But there is a better way. Let the state stimulate its educational activities to the end that the foreign element in both countries are taught to speak the English language and to think in the English language, and you will find that to be the passport to good citizenship. These classes will then assist, not retard the development of that sane public opinion upon which in the last resort the safety of the state depends, standing in the background, as it does, like the shadow of a great rock in a tempest-driven land.

Is there a dangerous existing condition in Canada and the United States today, socially, economically and nationally, which will give way before enlightened public opinion? Is there a jungle which may be changed into a neighborhood? Oh, I know quite well that on this earth we cannot have a perfect neighborhood because we are living on earth and not in heaven. But can we have a tolerably sweet and wholesome neighborhood where each and all may sit after the work of the day under his own vine and fig tree, none daring to make him afraid? Look abroad on the face of the earth today—what a jungle! Strewn with the wreckage and aftermath of a terrible war which may occur again, unless enlightened public opinion is established, among the nations of the earth. Because, mark you, they tell us over and over again, particularly our gallant warriors, fresh from the battlefields, that the late war did not end war. What a jungle, I say, in this battle-scarred world! Outside of Great Britain and her dominions, United States and France, were, although burdened with a heavy war debt, their soul is still untarnished; you have a Europe where famine, pestilence, desolation perverted ideas of government and social chaos follows in the wake of the misdeed of a military monster, who, instead of winning by the sword, as he fondly thought, perished by the sword. I cut this clipping, which would seem to be authoritative, from a newspaper recently:

"It is stated four million children are threatened with death from famine and disease in Europe and Asia Minor. This information is given to the world by the Central Bureau of the International Children's Aid Union formed recently under the auspices of the International Red Cross."

Sir, when we reflect by comparison on our own happy conditions in Canada and the United States at the present time we might well be complaisant could we forget that we must be cosmopolitans.

I believe it is not boasting to say; I believe it is simply a matter of fact to say, that on this North American continent, embracing the United States and Canada, we have, today, the most favored lands on the earth's round rugged surface. We live side by side under different flags, each proud of each, and respectful of the other. Examine the condition of affairs in the world today; inquire into the condition of the masses; compare countries on the ground of contentment, prosperity, security, institutions of government and degree of civilization and I venture to say that there are no other countries in the world

today where in spite of dangerous tendencies already referred to, the great masses are so contented; where there is so much prosperity; where every child can get a good common school education for the asking; where, in short, so high a standard of civilization is reached as here under the Stars and Stripes and in our own beloved Canada, the chief dominion of the great British empire, to which we are proud to belong. I would include Great Britain and her other dominions in the reference, but I am now thinking more particularly of the United States and Canada. We have here on this North American continent

"A heritage it seems to me
Well worth preserving; keeping free."

Are there any pitfalls ahead of us as a society or as a nation into which we need not stumble if the great torch of law, tempered with love, humanity, good-fellowship, common-sense, mutuality and helpfulness is held aloft to illumine our pathway? Sir, there are such pitfalls. He who runs may read. The torch is needed. Be ours to hold it high. Social and economic dangers—yes. I needn't detain you by leading up to the subject in a slow round-about way as some story-tellers are prone to do, because nothing is more disconcerting than the antics of the long winded story-teller, the point of whose tale, if it has any, is either lost in endless preliminaries or else—you anticipate it before he is half through. We like to get to the point nowadays. In other words, get down to cases. I sometimes read a speech or an essay where, if I had to give it a title, I would head it "A Solemn Dissertation on Platitudes and Generalities." Do not misunderstand me or think that I am placing my own remarks in a special class. I am merely voicing what I conceive to be the natural viewpoint of wide-awake Americans and Canadians. They want concrete facts. The air is full of generalities and they usually stay in the air. We should have definite objectives in life and action. We want to know where we are going, why we are going and how we are going to get there.

With what then are we menaced socially and economically? I will take up the national aspect later. Let me try to answer it in a single sentence. Modern society or world society, if you will, is menaced today on account of our refusal to adopt a new standard of social ethics demanded by modern thought. You will notice that I am putting the blame on ourselves not on the man who is clamoring at the gate. Agitator, we call him in our restless way. Why blame us you say? Why this self-accusation? Perhaps you expected me to say that our present established, smug, well-ordered society, which has stood the test of time, is menaced by the unhallowed hands that seek to alter it, or perhaps overthrow it. Well, sir, I prefer to leave the case as I stated it and I am not a socialist nor the thirty-second cousin to one. I know there would be an element of truth in it if I

did say that, but we are trying to elevate our own standards now, rather than the standards of those who are clamoring from without. Let us turn the searchlight on ourselves. We will find it more profitable. We have preached the doctrine that "all men are born free and equal." That slogan has resounded throughout the land. It sounds well, but sound is often empty. All men are born free, but they are not born equal. They are not born either with equal opportunity or with equal capacity. It is a fallacy to say that on this North American continent, with democracy triumphant, all men are equal and have an equal chance. There is no trouble in proving that all men are not born with equal capacities either for accomplishment or performance. They differ in intellect; they differ in bodily strength; they differ in ability to feed and clothe themselves and obtain a fair share of the good things of life. Oh, but you say, "let every man have the full benefit and the fruits of his own labor." That is what the working man says, with, I fear, a little short-sightedness. Is it not most unjust if one's capacity is limited through—mark you—no fault of his own that he should not receive a reasonable share of the good things of life? As well might you say that the crippled member of the family should not eat at the family table or ride in the family car, because, forsooth, he has not made the same contribution as the rest of the family to the wealth of the family. What are the promptings of love, that divine within us in such a case as that? Is it not to give the crippled boy, if anything, a little more than the rest—the choicest cut—the more frequent ride? Love sometimes errs but not usually. It invariably leads the objects of its care into green pastures and by still waters. It is avarice that leads into crooked by-paths. Sir, if this be a right principle in the family, why should it not apply in the aggregate of families which makes up the state. Why not endeavor to create a controlling public opinion to bring about this new view point based upon the soundest principles of justice and humanity?

Now, gentlemen, if I did not carry my thought further I might be entirely misunderstood. It might be thought that I was pleading for a grand system of largess from those who have to those who have not. I do not do so. How are we to help those born with unequal capacity? Let me try to answer it in a word. Not by filling their hands that they may eat without exertion, but by strengthening their limbs so that they can run and provide for themselves.

The socialistic idea of a Utopian State where all share alike like lotus-eaters in an Isle of Spice and Cloves is a mental delusion and a physical impossibility. They believe their theories, if carried out, will lead them to the promised land flowing with milk and honey. Because they do not reckon with the divine initiative in man they would, if not restrained, reach a land overflowing, not with milk and honey, but with vinegar and overgrown with thorns. Their theories lead to atrophy, sterility and death. But, sir, where the state as a

great elder brother or a great family council, if you will, uses its power to collect enough taxes from those who are strong, often through no virtue of their own, for the purpose of supplying, not help, but opportunity; to those who are weak, through no fault of their own, then in my humble judgment, we are approximating an ideal condition of society. How should the taxes of the strong be expended for his benefit? I am assuming, without argument, that "ability to pay" is the true humanitarian basis of just taxation. Well, if the weaker member of society is of inferior capacity or lacks equal opportunity he wants the very best educational facilities of a specialized character to expand his mind in the direction in which it is capable of expansion, to the end that he in his turn may make the greatest possible contribution to the state. Today he takes his chances in an unequal race with his fellows in the common school where all are fitted in the same mould. Like Procrustes, who made all travellers who came his way, lie on the same bed. You remember that old philosopher in mythological times. If the bed was too long for his guests he stretched them out until they fitted it. If they were too long for the bed he lopped off their limbs until they fitted the bed. It produced a painful uniformity. We have specialists and special courses in the higher walks of life; scarcely any in the lower.

Why, in the name of humanity, shouldn't the order be reversed or at least the opportunity be equalized? The indictment I have against the present order is that the handmaid of philanthropy, beautiful in her loveliness, is allowed or in fact compelled to perform functions which the state itself should perform. It is for the state to see that every boy and girl emerges from childhood into manhood or womanhood educationally equipped for life's battles just as fully as the rich man's son or daughter who can obtain in special schools the best educational facilities. Captains of industry, with great wealth, are in the public eye—captains in the educational field—or are they privates —are left to struggle along miserably paid and often dependent on the benefactions of the rich to supplement the meagre assistance of the state. Let the state be the benefactor, not charitable private munificence taking the wherewithal in taxes from the people according to ability to pay to enable it do so.

In what other way should the taxes of the strong be used by the state? They should be used after the weaker brother gets the very best educational facilities in seeing to it that industrial life is so regulated and controlled that the natural wealth of the country is opened up for development so that he gets a fair chance to labor with his hand or brain to acquire a competency. That involves a study of the duty of the state to prevent its natural wealth from being withheld from productive uses, a subject too large to attempt to exhaust at present.

We must build a new social edifice for the future not in a hurred

radical manner—good building cannot be done in a hurry—but by gradual processes, advancing step by step here and there. We can help to throw out the outposts; to create that public opinion without which reform cannot be accomplished. Sir, the fact is indisputable that today and for centuries past the natural wealth of our bounteous mother earth has been so developed that it contributes its millions to the few and its pennies to the many. Oh, but you say property rights must be respected. Initiative and inventive genius must be rewarded. Quite true. Man must derive, to a reasonable degree, the benefit of his own initiative; the benefit of new discoveries in acquiring new sources of wealth. But let us be reasonable. Let us not smother the few in wealth like the Duke of Clarence in English history, who was drowned in a butt of malmsey, his favorite drink, and leave the many ill provided for out of what is after all the natural wealth of all. Ah, but it may be said if you venture into this field, you will be pulling down the pillars of society. Why, sir, the forces of social progress in the past have always been met with that cry.

In my humble judgment in the social and economic field these things, necessarily briefly outlined, are the great problems demanding thoughtful attention. Cannot the spirit of intelligent disinterestedness help in their solution? We can mould opinion, we can create political power, we can cause the light of our beneficent ideals to illumine these questions and help in their solution.

We are menaced today, socially and economically, because many of our fellowmen think, some rightly, some wrongly, that they are not getting a square deal. Within the breast of each one of them beats a soul and a heart yearning with aspirations. They do not know the way to emancipation. They are groping in the dark—following false Gods—the easy prey of uninformed and unscrupulous leaders who think intelligence should beg pardon of ignorance. They believe in a vague indefinite way that it is on account of the shortcomings or the inability of the elder brother or of the family council or of the state to right the situation, that splendor and squalor are found side by side; that riches jostle want out of the way and avarice and greed elbow penury to one side. I am convinced that neither the agitators on the one hand, nor the state on the other, have yet found the true solution of these social problems. We have to go to Holy Writ to find the fundamental principles on which the new social edifice must be upreared. But because they are not yet appreciated or understood, the clamor from the weaker brother or from the vicious brother, if you will, because the vicious brother is the weakest of all—still continues without the gates, a clamor only, not a well thought out intelligent appeal—only a cry.

"Like infants crying in the night,
Like infants crying for the light,
And with no language but a cry."

So much for the social and economic situation. I regret to leave it sounding a pessimistic note. Perhaps, however, at some future convention, as a result of the new Evangel, some speaker may be able to tune his lyre in a higher key and sound the note optimistic.

Let us now consider and apply law and public opinion in the international field. I have already referred to international law and the necessity for a world-wide public opinion to make its edicts effective. Let me say at once that one of the greatest tasks before us in Canada and the United States is to mould and create public opinion with the view to preserving and perpetuating the good relations now existing, not only between Canada and the United States, but between this Great Republic and the Great British Empire. Are there any clouds on the horizon, scarcely larger than a man's hand which, unless dissipated, may disturb these happy relations which mean so much to the peace, order and good government of the whole world? I fear we cannot assume that rancor is entirely eliminated from the hearts of men and that no war-like impulses are left. Is it not a simple truth to assert that had a sane public opinion, the product of law and orderly thought, existed throughout the belligerent countries in the late war, that terrible catastrophe, which has turned a million homes into houses of mourning, created discord and upheaval which future generations will have to reckon with, would never have taken place. If war is to be averted in the future and men are to be allowed to pursue their peaceful avocations, giving chief attention to the upbuilding of that new social edifice, which I attempted to outline, and to remove our present discontents, it is only the Anglo-Saxon race that can do it and a heavy responsibility rests upon these great nations to allow no differences to come between them which will militate against their effective co-operation in preserving the peace of the world.

I repeat, then, that in the continuance of cordial relations between your great republic and our great empire, there is involved priceless obligations, not only to the countries we love so well as our own, but to the whole world. I am sure I can say, without question, that the people of Canada as a whole and of our empire as a whole do desire that the cordial relationships of the past shall continue between these two great countries. Possibly some exceptions must be made. There are some fools to be found in every country—they are found on every soil. No country has a monopoly of them. You have your Hearsts in this country giving expression to anti-British feeling, and we have our extremists who seize upon incidents of comparative insignificance to stir up animosity. If you read Horatio Bottomley in "John Bull," a British paper, one would almost conclude that there is great danger of estranged relations arising between the two countries. What about, God only knows. I don't. We have a thousand points in common. We have no substantial point of difference. But fretful irrita-

tions will arise unless we keep a serene eye steadily fixed on the fundamentals. You know some Americans say that Great Britain within its own empire should do this, that or the other; that she should give home rule to Ireland or independence to Ireland, or, at least, should gather up all the Irish shillelahs and make a bonfire of them. And some Britishers, on the other hand, say that you should not pursue a policy of splendid isolation; that you should accept unreservedly the covenants of the league of nations, a matter entirely of your own concern. As Josh Billings says, "It is easy to manage our neighbor's business, but our own sometimes bothers us."

But, sir, these are only effervescences, only bubbles playing on the political surface of things. The great deep current of thought, life and interest in both nations sweeps majestically on towards, not a sea of doubt but an ocean of peace, tranquillity and perfect understanding.

It is quite true that happy relations did not always exist between us. It is quite true that your great nation owes its origin to the outcome of a war with what was then your mother country, as she is still our mother country. But that is a long time ago. Too long to hold a grudge. No one but a Scotchman of a certain type would hold a grudge that long. But it is quite true that in those days dissensions did arise—and they will occur in the best regulated families—dissensions of such a serious character that you, our American kinsmen, decided to leave the family roof and "take your clothes and go." You decided—and you were quite right—that you would no longer endure the irascible conduct of old King George the III, who, by accident of birth, was, at that time, the head of the household and king in name, though not in deed, for his instincts were foreign to the best traditions of British statesmanship. That was an occasion when public opinion was stifled in the motherland. Sometimes public opinion is entirely wrong. Sometimes it is not truly represented by those who for the moment occupy place and power. The real public opinion of those days in England was represented, not by King George the III, and Lord Worth but by Burke, Chatham and Fox. One can yet, in fancy, hear the eloquent Chatham thundering in the British House of Commons against the British policy of that day. "If I were an American," he said, "as I am an Englishman, while foreign troops were landed in my country, I never would lay down my arms, never, never, never." But his eloquence was in vain. And so after waging a successful war, you, my American kinsmen, set up housekeeping on your own account and we are bound to say and glad to say, for it's only a matter of historical truth to assert it, that you upreared on the central portion of this continent a strong and enduring national edifice, a nation worthy of the best traditions of the great Anglo-Saxon race from which you sprung. And, sir, although the family quarrel of those early days naturally occasioned some bitterness for

a time; although the daughter feeling indignant for past wrongs, and in a spirit of self-reliance, refused to write home—not even for money—for several years, yet as time went on, time, the great restorer of all things, as time went on the sun of sweet content and reconciliation arose with healing in its beams, so that today the greatest cordiality and good will prevails. Cordiality, did I say, aye more than that—why, sir, we have sealed that relationship in what should be a deathless bond in the blood of our sons in the late war where British, American and Canadian soldiers fought side by side. Thousands of them today sleep their last long sleep far across the sea in a common grave. They gave their lives jointly in a great adventure for the preservation of justice, liberty and faith, faith in a great ideal. Because if ever a just war of defense against aggression was ever waged, it was in the late war. And, sir, may we not hope that in those common graves where the dust of British, American and Canadian manhood mingles with mother-earth in her last fraternal embrace, there shall be there forever buried the last vestiges of our former antagonisms! Sir, we hear at times idle talk, wanton talk in both countries of the respective parts played in the war by the different countries concerned. Where all have done so nobly how invidious to make comparisons! May I say this to you, my American friends, kinsmen? Let there be no feeling in your breasts that there is not the warmest appreciation in the hearts of Canadians and Britishers for the great support in men and means given by you in this great war, when we were engaged in a desperate fight with the Hun. Let there be no misunderstanding on that point. I have here an extract from a speech by Premier Lloyd George voicing British sentiments on that question, but I do not like to take time to read it. (Several voices—"Read it.") Mr. Macdonald then read the extract as follows:

"I will tell you what I feel about America. She came into the war at a time when the need for her coming was most urgent. Her coming was like an avalanche. The world has never seen anything like it. Her great army of all ranks gave service that no man would in 1917 have believed possible. The effort of her navy was beyond praise. The president and the whole administration at Washington, and every branch of the American nation everywhere, worked closely and effectively with the European against Germany; and finally the great American people put every ounce of their invincible might into a war three thousand miles away, a war on issues at first strange to them and offering no direct or immediate menace to their interests. And now I can only say that I trust them, I trust their fairness and their sound judgment, and whether they come in or stand aloof"—(he is referring now to the discussion going on in reference to the league of nations)—"whether they come in or stand aloof, even if they never give anything more than they have already given they would leave Great Britain and the whole of Europe under a debt of gratitude that can never be repaid."

Sir, I believe that we in Canada, from our position as daughter of the empire and as your next door neighbor, can play a tremendous

part in preventing any disturbance of the best relations between these two great nations. We are growing up beside you increasing in stature and strength, slowly it may be, but surely, and our gradual growth and development until recent years passed unnoticed by the people of the United States. It is, I think, within the mark to say for well nigh a century you were apparently so intently engaged in nation building in your own country that Canada was to you little more than a name, a land of forest and snow through which roamed countless Indians and hardy Esquimaux. There was for many years little interchange of thought or community of interest between Canada and the United States. There was a little intercourse of a war-like nature between the two countries a way back in 1812 when a three-year war took place, the outcome of which you will find by consulting the histories of both countries. That, too, happened a long time ago. But, sir, the day of little intercourse between Canada and the United States has gone forever. There is now the greatest intercourse of the closest character between the two countries socially and in the way of trade. We visit your country in great numbers. You also visit Canada in great numbers, particularly when it is wet on our side and dry on yours. Your customs officials, I notice, display a most friendly interest in Canadians entering the United States. They pat us on the shoulder and in a "feeling" way try to discover if there is not some little cordiality concealed about one's person or effects. They actually search for it.

But in all seriousness Canada today should be and will be the great buffer state, the daughter, standing between to preserve peace amity and concord between our great empire and your great republic. It is well worth pointing out and emphasizing that there cannot be in the nature of things, good relations between Canada and the United States and bad relations between Great Britain and the United States. There cannot be good-will towards the daughter and ill-will towards the mother in a well regulated household and ours is a well regulated empire. Canada is intensely loyal to the mother-land. I need not give proof of it. Our parliament in the late war was simply a committee of ways and means to provide the implements of warfare. Entry into the war itself was decided by the overwhelming force of public sentiment, in other words, "Public Opinion." What a mighty force it is for good when tuned aright; for evil when it is awry!

We in Canada today, while not having the status of a nation in so far as sovereignty is concerned, are in reality a sister nation within an empire and we believe that we form the strong right arm of the British empire. Canada is the empire's great granary; its great reservoir of power. That is why I ask you to lay great stress on promoting good relations between Canada and the United States, if you are to preserve good relations with Great Britain.

We in Canada have reached the full status of nationhood in all

its essential attributes; a nation within, what for us is the charmed circle of a great empire. We are proud of our motherland; of her glorious traditions; of the heroic and unselfish part she played in the late great war; as you are equally proud of your great republic, the land of the free, glorious in its origin—hopeful in its destiny. We in Canada are making a nation to the north of you and, sir, I feel sure that I can safely say we have from you, our American kinsmen, only the warmest feelings and good wishes in our task of nation building, just as we in Canada rejoice in your prosperity and are glad to see "peace within your borders and plenty in your stores."

We are the two great branches of the Anglo-Saxon race and the predominance of the Anglo-Saxon race must be preserved. What is the secret of that predominance? We have only to look at the lessons of history to see the secret of that power of which, sir, it is no sin to boast. And what does history reveal to us? There have been other great races; great empires and great republics in the past possessing in the arts—possibly not in the sciences, but in letters and philosophy a degree of civilization almost equal to our own. Call out down the corridor of time "where are they"? and only an empty echo answers. Why is it that Egypt with her pyramids, those stony records of the dawn of history which have looked down upon forty centuries of progress; Greece with her wondrous works of art, her marble Parthenon and the glorious splendor of her Athens; Rome with the grandeur of her legions and the majesty of her laws, why is it that these once proud nations of antiquity have crumbled to the dust while the nations of the Anglo-Saxon race still endure, defying the corrosion of time? Sir, the reason is not far to seek. It is because those nations of antiquity built their kingdoms on the bodies and bones of living men; because they enslaved the conquered and oppressed the poor; because they won by the sword, therefore they perished by the sword. Rome was great in the time of the Gracchi and rose to still greater heights under the sway of Caesar, but in the reign of Nero she sank into vice and crime; Nero, among whose lesser crimes was the murder of his wife and mother; Nero, who by profligacy and debauchery, brought the Roman empire to ruin and decay—and Rome perished. Won by the sword—perished by the sword. But, sir, the nations of the Anglo-Saxon race rest on a firmer base. They rest on the ever increasing intelligence and liberty-loving character of her people. They rest on the fundamental character of her free institutions, broad-based upon the people's will. Not on force of arms or on strength of navies, though they are ready for emergencies, but on the character of her free institutions. And, sir, so long as we are true to those traditions of our race and nail at the masthead the symbols of truth, honor, justice and freedom, so long will the star of ascendancy of these great branches of the Anglo-Saxon race remain at its zenith.

Why should there not be a grand alliance of the Anglo-Saxon race? I do not speak of conventions, because I know your antipathy to European alliances, but I do speak of an entente cordiale. If we are seeking the establishment of a righteous world, wide public opinion, what better basis for its attainment? Every fact in history points to this consummation most devoutly to be wished for. We have been reminded that we have a common origin; that our fathers fought side by side at Hastings; wrested Magna Charta from a tyrannical king, and down through succeeding generations laid upon sure foundations the basis of an enlightened freedom. We are truly told that our literature is a common heritage and our jurisprudence comes down from Coke and Mansfield and from Marshall and Story. Surely, surely, surely, with these cumulative evidences of common interests, common origin, common faith, common hopes and common aspirations, no combination of circumstances or events will ever cast us asunder.

And now, gentlemen, I leave you to whatever reflections my thoughts provoke. You will, I hope, through random words detect the strand of thought throughout to which I have endeavored to cling. It is the development in all our activities, in the realm of law, on the plains of humanity, on the highlands and lowlands of life, in the social, industrial and international life of the Anglo-Saxon race of that great creative power which responds to the heart-beats of mankind—righteous public opinion. It is the greatest force in the universe. It is mightier than the sword. All men either love it or fear it. All men either follow it or make concessions to it. It dissipates before its beneficent rays the clouds of rancor, jealousy, false alarms and impeding prejudices, scattering them with its effulgent beams. May its benignant rays extend to the farthest corners of the earth—Righteous Public Opinion—the Light of the World—the Lamp of God

——END OF 1920 SESSION——

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